THE

JUSTICE of the PEACE,

AND

PARISH OFFICER.

By RICHARD BURN, Clerk;

One of His Majesty's Juſtices of the Peace for the County of Westmorland.

The **Second Edition**, with the Statutes and adjudged Cases continued to the preſent Time.

In TWO VOLUMES.

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MDCCLVI.

MVSEVM
BRITAN
NICVM

TO

Sir JAMES LOWTHER

OF

LOWTHER, Baronet,

THIS Book is humbly dedicated,

By the author,

RI. BURN.

THE PREFACE TO THE FIRST EDITION.

THE author propoſeth in this book to render the laws relating to the ſubjects it treats of, a little more intelligible than hath hitherto been done.

The method he makes uſe of is various.

The firſt thing regarded is the order of *time*. Thus in the Poor laws; firſt is ſet forth the appointment of *overſeers*; next the ſeveral branches of their duty, in finding *ſettlements* for the poor —— in *removing* them to ſuch ſettlements —— in making *rates* for their relief —— in *relieving* and otherwiſe ordering them —— and laſt of all, in *accounting* at the expiration of their office. —— Then again, in treating of *ſettlements*, it occurs, to conſider diſtinctly, and as near to the ſaid order as may be, ten different kinds of ſettlements —— by *birth* —— by the *parents* ſettlement —— by *apprenticeſhip* —— by *ſervice* —— by *marriage* —— by *inhabiting forty days after notice* —— by paying *pariſh rates* —— by ſerving a *pariſh office* —— by *renting* 10l. *a year* —— and by a perſon's *own eſtate*. —— In like manner, in treating of the *rates*, firſt is ſet forth the courſe of *laying*

the aſſeſſment —— then the *allowance* thereof by the juſtices —— *publiſhing* the ſame in the church —— *appeal* againſt the rates at the ſeſſions —— levying the ſame by *diſtreſs* —— and finally, *commitment* where no diſtreſs can be had.

Thus to exhibit another inſtance —— In the article of the *Woollen manufacture*, which makes up a conſiderable part of the juſtice of the peace his duty, and of the officers ſubordinate to him, there is ſuch a number and variety of ſtatutes, that authors are generally overwhelmed with them. To avoid which perplexity, the laws are here digeſted in order, according to the natural progreſs of that buſineſs; from the ſhearing of the ſheep, to the exportation of the wool manufactured; under the ſeveral heads of *winding of wool* by the ſhearer —— laws to prevent its *exportation* —— *working* of cloth —— *fulling* —— *meaſuring* —— *dying* —— *ſtretching* —— *dreſſing* —— *exporting*.

Where there is no priority in point of time; the next method is that of Lord *Coke*, to frame a definition which takes in the whole ſubject, and then explain the ſeveral parts of ſuch definition in their order. Thus *Grand larceny* is defined to be, *A felonious and fraudulent taking and carrying away by any perſon of the mere perſonal goods of another, above the value of* 12d. In the handling of which, the ſeveral branches of the definition are explained in the order as they ſtand: *viz. A felonious and fraudulent taking* —— *and carrying away* —— *by any perſon* —— *of the mere perſonal goods* —— *of another* —— *above the value of* 12d. Under which heads the general learning relating to that whole title is comprehended.

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The like method is purſued in treating of the *commiſſion of the peace*, the form of an *indictment*, the form of an *order of removal*, and other articles.

In general, it is provided, that one thing ſhall clear the way for another, and the ſubſequent paragraphs explain the preceding.

Under the influence of which conduct, the author hath attempted to bring together under one general title, divers articles relating to the ſame ſubject, which in the common books are broken and detached under various ſeparate titles; hoping thereby, that what hath hitherto been thought introductory of confuſion, may tend to render the ſubject more perſpicuous, in exhibiting the whole under one comprehenſive view. Thus the laws relating to the *game*, which are above forty in number, and are interſperſed in the common books under about thirteen different titles, are here digeſted under one general title *Game*, to which the reader ſhall have recourſe for the knowledge of whatſoever belongeth to that ſubject. For example, if any perſon would be ſatisfied, what penalty the law hath provided for *tracing hares in the ſnow*; by recurring to the general title concerning the game, he will find the game diſtinguiſhed into three kinds, the *four footed* game, the *winged* game, and the game of *fiſh*: The *four footed* game, are diſtributed into the ſeveral ſpecies of *deer*, *hares*, and *conies*; under which head concerning *hares*, he will readily find what is deſired. In like manner, the *winged* game are ſubdivided into ſeveral branches, concerning *hawks* and *hawking* —— *ſwans* —— *partridges and pheaſants* —— *pigeons* —— *wild ducks*, *wild geeſe*, *and other water fowl* —— *grouſe or moor*

game —— *herons* —— and *other fowl*; each of which have their peculiar laws.

In theſe large comprehenſive titles, care is likewiſe taken, to be as particular as may be without injuring the connexion in the ſtatutes, by inſerting the whole law by it ſelf, relating to each ſeparate article. The benefit of which will appear by the following inſtance: If a perſon would know, what number of horſes or beaſts in a cart or waggon are allowed by the ſtatutes for the preſervation of the roads; let him take what treatiſe at preſent he pleaſes concerning the highways, he muſt read over the whole, before he ſhall be ſure that he hath found all which the law hath enacted concerning the ſame; and ſuch is often the inaccuracy and confuſion, that when he hath peruſed the whole, perhaps he may be ſtill to ſeek. For as to this inſtance before us, there have been regulations made concerning the ſame, by ten different acts of parliament, at very different times. Before he can have any competent knowledge thereof, he muſt lay all theſe ten acts together; and when he ſhall have done this, he will find amongſt them ſo many repeals, and revivals, and explanations, and amendments, that it will even then be no eaſy matter to conclude with certainty how the law doth ſtand as to that article. To ſpare the reader all which trouble, the author hath in this and all other the like inſtances, laid the whole law together relating thereunto, or at leaſt all that hath occurred to him, or which he hath thought it material to inſert. So that the reader may receive ſatisfaction in a very ſmall compaſs, as to what he ſhall be inquiring about, or at leaſt he may be ſatisfied in this, that if he doth not find it

there, he need not ſeek for it elſewhere in the book.

And by this method of bringing together into one general title, all thoſe ſeparate diſtinct titles, which have a mutual relation to and dependance upon each other, the author hath avoided one great inconvenience, of referring the reader from one title to another, and from that other back again to the firſt, and (which is not unuſual in books of the like kind) perhaps loſing the thing to be treated of betwixt them.

Upon which account alſo, where one law occurreth under two different titles, it is uſual with him to inſert the ſame under both thoſe titles; that ſo the reader's attention may not be interrupted, by ſending him to ſearch other titles, and from thoſe perhaps others again, which have no principal relation to the matter he hath in hand.

Alſo, upon another account, he hath ſometimes made uſe of more words than otherwiſe he would have done, namely, to avoid the frequent repetition of the term *&c.*; which is a vague expreſſion, and apt to create an uneaſineſs in the reader's mind, for that he cannot be ſatisfied from thence, how much, or how little is intended to be underſtood.

He hath alſo been ſomewhat large in the matter of *precedents* under divers titles; and hath endeavoured to bring them much nearer to the ſtatutes, upon which they ought to be formed, than uſually hath been done.

For all which enlargements, he hath the more ſpace allowed to him, for that he hath not thought it neceſſary (as others have done) to take up near one fourth part of the book,

by

by inſerting *Blackerby*'s juſtice at the end of it, by way of index; hoping that the method he hath purſued will render every thing of that kind impertinent and uſeleſs.

The materials which the author hath made uſe of, are chiefly of four kinds —— The *ſtatutes* at large —— the ſeveral treatiſes concerning the *pleas of the crown* —— the *reports* of caſes adjudged in the court of king's bench —— and the books concerning the *office of a juſtice of the peace*.

As to the *ſtatutes* at large, or acts of parliament; the author hath by no means thought himſelf at liberty, as Mr. *Dalton* and others have done, to deliver the import thereof in his own words; but hath conſtantly abridged the act, in the words of the act it ſelf, leaving out as little as poſſible which may ſeem any way material. And to each diſtinct clauſe, he hath annexed the interpretation thereof, where the ſame hath been determined in the court of king's bench, or expounded by other good authority.

The treatiſes concerning the *pleas of the crown*, are thoſe of *Stamford*, *Coke*, *Hale*, and *Hawkins*. Of the firſt of theſe, the author hath made little uſe, further than as he is adopted by the other three. As to which three great authorities, where the law hath been declared by Lord *Coke*, and not controverted by any other, nor altered ſince his time by any act of parliament, or judicial determination, the author hath given to him the preference. And where any of theſe differeth from the other, he hath noted the difference.

In citing of Mr. *Hawkins*, he hath not thought it allowable, as is uſual with others,

to

to omit the ſeveral degrees of caution and aſſent, with which he delivereth his opinion; as, *it ſeemeth*, or *it hath been ſaid by ſome*, or *it ſeemeth to be the better opinion*, or *it ſeemeth to be agreed*, and the like; which are by no means arbitrary words without much meaning, but are inſerted by him with the utmoſt deliberation and judgment.

As to the books of *reports*; where the caſes therein have been conſidered by Mr. *Hawkins*, and the other learned perſons before mentioned, the author hath judged it very proper to leave the matter there, as ſettled by them. As to the reſt, he hath by no means thought himſelf of ability to proceed in Mr. *Hawkins*'s manner, by laying together all the reports on the ſame ſubject, and thereupon extracting an opinion out of the whole; but hath inſerted the ſame at large, or what he hath thought moſt material thereof, and left the determination thereupon to the reader's better judgment.

And here it may be requiſite, that the reader be admoniſhed, not to expect that the book ſhall be more perfect, than the materials of which it is compoſed. All the books of reports are not of equal authority. Some, as thoſe of *Keble*, *Salkeld*, Lord *Raymond*, and many others, are approved or allowed by the Judges: others, which are perhaps not of leſs internal authority, have not received that ſanction; ſuch, for inſtance, are thoſe of Lord *Coke*. During the greateſt part of his preſent Majeſty's reign, no authentick collection of reports hath been publiſhed, of caſes adjudged in matters relating to the ſubjects of this book. Herein the author could do no otherwiſe than make uſe of the materials he hath. Such are,

particularly,

particularly, *Andrew's reports*, and two volumes of *Seſſions caſes* publiſhed without the author's name. Of theſe it may be obſerved, that in the main they do agree very well with books of good authority, where they happen to report the ſame caſes; and have no appearance of wilful falſification in caſes not reported elſewhere. But for theſe, or any other, the author himſelf voucheth not: And, as he doth not add to their credit, ſo he doth not detract from it; but leaveth every author (as he needs muſt) to anſwer for himſelf. For he hath made it an invariable rule, upon all occaſions, to cite his authorities, what ſuch ſoever they be; and, in all material inſtances, in the very words of the original authors: that ſo, what may be of good authority in it ſelf, ſhall not be rendred leſs ſo by his handling of it. And where no authority is alledged, he deſires the reader will look upon it as ſuch, namely, as having no authority; the ſame being nothing elſe but the author's own private obſervations, which are ſubmitted to every reader's judgment, to approve or reject as he ſhall ſee cauſe.

The books of authority concerning the *office of a juſtice of the peace*, are thoſe of *Fitzherbert*, *Crompton*, *Lambard*, and *Dalton*; the laſt of which was publiſhed in the reign of king *James* the firſt: ſince which time, no book under that title hath been allowed as ſufficiently authentick. And even the additions which have been made to *Dalton* ſince his death, ſeem to have no better claim to an uncontrolable authority, than other collections which have not obtained it. And *Dalton* himſelf is much injured in the modern editions, in

in like manner as was obſerved before of Mr. *Hawkins*, by delivering that as abſolute, which Mr. *Dalton* publiſhed under the ſeveral degrees of aſſent or doubtfulneſs before mentioned; and which the author, in juſtice to Mr. *Dalton*, hath reſtored.

Where *Dalton* hath adopted *Lambard*, *Crompton*, and *Fitzherbert* (which he doth moſt frequently in their own words) the author hath thought it ſufficient to cite *Dalton*'s ſingle authority. And generally, in all other caſes, where authors are agreed, he hath judged it unneceſſary to alledge more than one or two good vouchers.

Concerning the other books of this kind, which have been publiſhed ſince *Dalton*'s time, it is unneceſſary to enlarge; ſince of the moſt of them the author hath made no uſe, and of the reſt very ſparingly; and he will not ſeek to recommend his own book, by finding fault with others before him.

Orton, Weſtmorland,
Sep. 29. 1754.

ADVER-

ADVERTISMENT

Concerning this

SECOND EDITION.

THREE things herein the author hath chiefly attended to: 1. To continue the ſtatutes to this preſent time. 2. To authenticate divers caſes of ſlender authority, by the ſanction of Sir *John Strange*; whoſe reports of caſes adjudged during the reigns of his late and preſent majeſty, have ſupplied in ſome meaſure the deficiency which was in that part of the law before. 3. To take ſomewhat a larger ſcope in inveſtigating matters of antiquity; herein preſuming to differ from Lord *Coke* and other authorities of the law: being led therein by his learned and ingenious friend Dr. *Morton* of *Leiceſter-fields*; to whom upon the like account he expreſſed his acknowledgments in the poſtſcript to the former edition.

Sep. 29. 1755.

INTRO-

INTRODUCTION,

Conſiſting of TWO PARTS;

CONTAINING,

I. *Certain abbreviations made uſe of in this work.*

II. *Some general rules to be obſerved, in the conſtruction of ſtatutes, or acts of parliament.*

I. *Certain abbreviations made uſe of in this work.*

IN order to keep the book within a reaſonable compaſs, the following *abbreviations* are made uſe of.

1. The word *juſtice* is always to be underſtood to mean *juſtice of the peace*, when not otherwiſe expreſſed. Juſtice.

2. The words *one juſtice* ſhall always be underſtood to ſignify *one or more juſtices:* ſo that what is directed to be done by one, ſhall not be intended thereby to exclude others from joining with him. One juſtice.

3. In like manner, *two juſtices*, when not otherwiſe expreſſed, ſhall be underſtood to ſignify *two juſtices or more.* Two juſtices.

4. So alſo a conviction on the oath of *one witneſs*, ſhall be underſtood to denote *one witneſs or more.* One witneſs.

5. And *two witneſſes* ſhall denote *two or more witneſſes.* Two witneſſes.

6. (1 Q.) ſhall be underſtood to ſignify *one whereof is of the* Quorum. Quorum.

7. The *juſtices in ſeſſions* ſhall ſignify the ſaid juſtices, or *the major part of them.* Majority.

8. The word *ſeſſions* ſhall denote *the general or quarter ſeſſions*, if not otherwiſe expreſſed. Seſſions.

9. The word *warrant* ſhall always ſignify *warrant under hand and ſeal*, where not expreſſed otherwiſe. Warrant.

10. Judges

Judge of assize. 10. Judges or Justices of *assize* shall be understood to signify also those of *Nisi Prius*, *Oyer and Terminer*, *and General Gaol Delivery*.

Mayor. 11. The word *mayor* shall always be understood to imply *bailiffs and other chief officers in corporations*.

Constable. 12. The word *constable* shall always be understood to imply *tythingmen*, *borsholders*, *headboroughs*, *and other peace officers of like degree*.

Overseer. 13. The word *overseer* shall be understood to mean *overseer of the poor*, where not expressed otherwise.

Poor. 14. Where a penalty, or part thereof, is expressed to be given to the *poor*; that shall be always understood to denote *the poor of the parish where the offence was committed*, if not otherwise limited.

Penalty. 15. Where a penalty is to be recovered before the justices of the peace, it is thought indispensible to insert particularly the manner of recovering the same; but where it is to be sued for in any of his majesty's courts of record at *Westminster*, it is judged not necessary to set forth the special method of procedure there: and generally, where it is expressed, that a person shall do, or not do such a thing, on pain of such a sum, without more, it shall be understood that such penalty is not recoverable before the justices of the peace, but only in the courts at *Westminster*.

Overplus. 16. In all cases of *distress and sale*, it shall be understood, that the *overplus* must be returned to the owner; after the sum or sums to be thereout deducted, shall be satisfied and paid.

Lands. 17. *Lands* shall be understood to stand for *lands*, *tenements*, *and hereditaments*.

Transportation. 18. Where *transportation* is directed for any offence, it shall always be understood, *that if the offender shall return before the time limited, he shall be guilty of felony without benefit of clergy*.

Blank spaces. 19. In the blank spaces for the names in the precedents, instead of inserting initial letters arbitrarily, it is thought it may be some small help to the memory, that *A. Q.* shall signify the offender, *A. I.* the informer, *A. W.* the witness, *J. P.* the justice of the peace, and the like.

20. Also,

20. Alſo, for brevity ſake, ſums of money and other numbers are uſually expreſſed by figures, and not in words at length; but it is to be remembred, that in the forms of warrants, convictions, and other proceedings before the juſtices, they ought to be expreſſed in words at length, and not in figures. Figures.

21. Where a ſtatute is ſaid to be in force, until ſuch a day, month, and year, *&c.* it ſhall always be underſtood to imply, *and from thence to the end of the then next ſeſſion of parliament.* Continuance of ſtatutes.

22. In the ſtatutes made in the reign of the late King *William*, it is thought not neceſſary upon all occaſions to ſay *William the Third*, ſince there are no printed ſtatutes in the reigns of *William the Firſt and Second.* Citing of ſtatutes.

Nor is it thought neceſſary in ſuch ſtatutes to add the name of Queen *Mary* to that of King *William*; but it is judged ſufficient for the underſtanding thereof, to quote the ſtatutes in this manner; *viz.*

1 *W. Seſſ.* 2. *c.* 6. *ſ.* 3. to ſignify the ſtatute made in the parliament holden in the firſt year of the reign of King *William* the third and Queen *Mary*, the ſecond ſeſſion thereof, chapter the ſixth, ſection the third.

Abbreviations in the names of books cited as authorities, or otherwiſe occaſionally noted, conſiſting for the moſt part of ſome of the initial letters of the authors names, and other common diſtinctions, need not to be further explained.

II. *Some general rules to be obſerved, in the conſtruction of ſtatutes, or acts of parliament.*

To avoid repeating the ſame obſervations ſome hundreds of times, it is thought proper to premiſe the following general rules to be obſerved, in the conſtruction of ſtatutes or acts of parliament.

1. Regularly, a ſtatute in the affirmative doth not repeal a precedent affirmative ſtatute. 11 *Co.* 61. How far an affirmative repealeth an affirmative.

But if the latter is contrary to the former, it amounteth to a repeal of the former. L. *Raym.* 160.

How far an affirmative ſtatute altereth the common law.

2. A ſtatute made in the affirmative, without any negative expreſſed or implied, doth not take away the common law; and therefore the party may waive his benefit by ſuch ſtatute, and take his remedy by the common law. 2 *Inſt.* 200.

Repealing a repealing ſtatute.

3. By repealing of a repealing ſtatute, the firſt ſtatute is revived. *Read. Parl.*

Special power to be purſued.

4. Regularly, where an act of parliament giveth a power or intereſt to one perſon certain, by this expreſs deſignation of one, all others are excluded. 11 *Co.* 59, 64.

Power to adminiſter an oath.

5. In all caſes, where juſtices may take examinations, or other accuſation or proof, tho' the ſtatute doth not expreſly ſet down that it ſhall be upon oath, yet it ſhall be intended that it ſhall be upon oath. *Dalt. c.* 115.

In what caſe the ſeſſions may execute the power given to two juſtices.

6. Generally, it is holden, that where a ſtatute appoints a thing to be done by one or more juſtices, without giving any appeal to the ſeſſions; there the juſtices in ſeſſions may do that thing: but where an appeal is given to the ſeſſions, the juſtices in ſeſſions cannot proceed originally therein, becauſe that method would take away the power of appealing.

How far an indictment will lie where another method of proſecution is appointed.

7. Where a ſtatute makes a new offence, which was no way prohibited by the common law, and appoints a particular manner of proceeding againſt the offender, as by commitment, or action of debt, or information, without mentioning an indictment; it ſeems to be ſettled at this day, that it will not maintain an indictment, becauſe the mentioning the other methods of proceeding only, ſeems impliedly to exclude that of indictment: Yet it hath been adjudged, that if ſuch a ſtatute give a recovery by action of debt, bill, plaint, information, *or otherwiſe*, it authorizes a proceeding by way of indictment. 2 *Haw.* 211.

Where no method of proſecution is appointed.

8. But every contempt of a ſtatute is indictable, where no other puniſhment is limited. 1 *Haw.* 60.

Where the defendant may be proſecuted both by the king, and the party grieved.

9. And whereſoever an act of parliament doth generally prohibit any thing, the party grieved ſhall not only have his action for his private relief, but the

the offender ſhall be puniſhed at the king's ſuit, for the contempt of the law. 2 *Inſt.* 163.

10. All actions, indictments, or informations, on penal ſtatutes, for any forfeiture limited to the king, ſhall be brought within two years after the offence committed; if limited to the king and proſecutor, then within one year; and if it is not ſued for in that one year, then the king may ſue for the ſame within two years, after the expiration of that one year; and not otherwiſe. 31 *El. c.* 5. *ſ.* 5. That is to ſay, unleſs where it is otherwiſe directed by ſubſequent ſtatutes. In what time proſecutions ſhall be on penal ſtatutes.

11. Many ancient ſtatutes are penned in the form of charters, ordinances, commands, or prohibitions from the king, without mentioning the concurrence of either lords or commons; yet inaſmuch as they have always been acquieſced in as unqueſtionably authentick, this eſtabliſhes and confirms their authority, and the defect is ſalved by ſuch univerſal reception. *Hawkins's preface to the ſtatutes.* Statutes not in the name of the whole legiſlature.

12. The preamble or rehearſal of a ſtatute is deemed true; and therefore good arguments may be drawn from the preamble. 1 *Inſt.* 11. Preamble.

13. Where a ſtatute directs the doing of a thing, for the ſake of juſtice, or the publick good; the word *may* is the ſame as the word *ſhall:* as where the ſtatute of the 14 *C.* 2. *c.* 12. enacts that the overſeers may make a rate to reimburſe the conſtables, this is conſtrued they *ſhall*; for they are compellable ſo to do. 2 *Salk.* 609. *May* do ſuch a thing, how to be underſtood.

14. Where a ſtatute directs a penalty to be recovered *in any court of record*; this ſhall not be intended of the quarter ſeſſions, unleſs it be ſpecially named in ſuch ſtatute; but only of the courts of record at *Weſtminſter*. 6 *Co.* 19, 20. 2 *Hale's Hiſt.* 29, 30. Court of record.

15. It is a general rule in the conſtruction of ſtatutes, that where things of an inferior degree are firſt mentioned, thoſe of a higher dignity ſhall not be included under general ſubſequent words; as where a ſtatute ſpeaks of indictments to be taken before juſtices of the peace, or *others having power to take in-* Higher courts not intended, where the inferior are firſt mentioned.

dictments, it ſhall be underſtood only of other inferior courts, and not of the king's bench, or other courts at *Weſtminſter*. 2 *Co.* 46. 2 *Haw.* 305.

Power to convene the parties.

16. Where a ſtatute gives power to the juſtices, to require any perſon to do a thing, as to take the oaths, the law implicitly gives them power to make a warrant to have the body before them; for when the law granteth any thing to any one, that alſo is granted, without which the thing it ſelf cannot be: And it is againſt the office of the juſtices, and the authority given them by the law, that they ſhall go and ſeek the parties. 12 *Co.* 130, 131.

Neceſſity of ſummoning the party.

17. Where a ſtatute gives power to the juſtices of the peace, to hear and determine an offence in a ſummary way; it is neceſſarily implied, and ſuppoſed, as a part of natural juſtice, that the party be firſt cited, and have opportunity to be heard and anſwer for himſelf. 1 *Haw.* 154.

Two juſtices to be both together.

18. Where an act of parliament gives power to two juſtices finally to hear and determine an offence, it is neceſſarily ſuppoſed, that they ſhall be both together, or, which is the ſame thing in other words, that they ſhall hold a ſpecial ſeſſions for that purpoſe. And the like is, when they are to do any other judicial act, as to make an order of baſtardy, or adjudge the ſettlement of a poor perſon. For it is unknown to the laws of *England*, that two perſons ſhall act as judges in the ſame cauſe, when at the ſame time one of them is in one part of the county, and the other in another.

Informer's oath.

19. Where a ſtatute appoints a conviction to be on the *oath of one witneſs*; this ought not to be by the ſingle oath of the informer; for if the ſame perſon ſhould be allowed to be both proſecutor and witneſs, it would induce profligate perſons to commit perjury, for the ſake of the reward. L. *Raym.* 1545.

Confeſſion.

20. Where a ſtatute directeth, that a perſon ſhall be convicted of an offence, upon the *oath of one or more witneſſes*, and ſaith nothing of the *confeſſion* of the party; yet if the offender ſhall before the juſtice confeſs the offence, he may be convicted upon ſuch confeſſion: for confeſſion is ſtronger evidence than

than the oath of witneſſes. *Dalt.* 109, 162. *Str.* 546.

21. Where an act of parliament gives power to the juſtices of the peace, to take order in any matter, *according to their diſcretions*; this ſhall be underſtood, according to the rules of reaſon, law, and juſtice, and not by private opinion. 5 *Co.* 100. Diſcretionary power.

22. In all caſes where *the kingdom of* England, or *that part of* Great Britain *called* England, hath been or ſhall be mentioned in any act of parliament; the ſame ſhall be deemed to comprehend *the dominion of* Wales, *and town of* Berwick upon Tweed. 20 *G.* 2. *c.* 42. *ſ.* 1. England includes Wales.

23. By the articles of the Union, 5 *An. c.* 8. All parts of the united kingdoms of *England* and *Scotland*, ſhall be under the ſame regulations as to trade: So that where any act, in relation to trade, before the 5 *An.* mentions the kingdom of *England*, the ſame ſhall be underſtood to extend to the whole united kingdom. How far Scotland is included.

24. It may be laid down as an invariable rule, that *the law favours liberty*: So that in the conſtruction of a penal ſtatute, where the interpretation is dubious, that ſenſe muſt be purſued (all other things being equal) which is more beneficial to the ſubject, or the party ſuffering. Thus, where an directs, that the juſtices ſhall commit an offender to priſon for 12 *months*, the juſtices may not alter the words, and commit him for *a year*; for in this reſpect, 12 months and one year are not the ſame; but the months muſt be computed at 28 days to the month, and not as Kalendar months, unleſs it be ſo expreſſed in the act. Twelve months.

25. In all caſes wherein, by any act of parliament, an oath ſhall be allowed or required; the ſolemn affirmation of quakers ſhall be allowed inſtead of ſuch oath, altho' no particular or expreſs proviſion be made for that purpoſe in the ſaid act. 22 *G.* 2. *c.* 46. *ſ.* 36. Quakers affirmation.

26. To ſay that a perſon ſhall *forfeit* generally, or that he ſhall *forfeit to the king*, is all one; for the king ſhall have every forfeiture not otherwiſe limited. 11 *Co.* 60. Forfeiture.

27. Where a ſtatute ſaith, that ſuch a perſon ſhall pay *fine and ranſom* to the king; in legal underſtand- Fine and ranſom.

ing, ſuch fine and ranſom are all one: for if they were divers, then ſhould the party pay two ſums, one for the fine, and another for the ranſom; which was never done. 1 *Inſt.* 127.

At the king's pleaſure.

28. Acts of parliament that ſpeak of fines or ranſoms *at the king's pleaſure*, are always to be underſtood of the king in his courts by his juſtices. 1 *H. H.* 375.

Where a power of commitment is implied.

29. It is ſaid, that whereſoever a juſtice of the peace is impowered, by any ſtatute, to bind a perſon over, or to cauſe him to do a certain thing, and ſuch perſon being in his preſence ſhall refuſe to be bound, or to do ſuch thing; the juſtice may commit him to the gaol, to remain there till he ſhall comply. 2 *Haw.* 116.

Impriſonment, when.

30. When a ſtatute appoints impriſonment, but limits no time when; it ſhall be immediately. 8 *Co.* 119.

Impriſonment, how long.

31. When a ſtature appoints impriſonment, but limits no time how long; the priſoner in ſuch caſe muſt remain at the diſcretion of the court. *Dalt.* 410.

Commitment to the houſe of correction, for what time.

32. Where any offender ſhall by a juſtice of the peace be committed to the houſe of correction, for an offence cognizable before him out of ſeſſions, and the time and manner of puniſhment is not by law expreſly limited; he may commit him to the houſe of correction, *there to be kept to hard labour, until the next general or quarter ſeſſions, or until diſcharged by due courſe of law.* 17 G. 2. c. 5. ſ. 34.

Statute making an offence felony.

33. Wherever a ſtatute makes any offence *felony*; it incidentally gives it all the properties of felony at common law. 1 *Haw.* 105.

Miſpriſion.

34. Therefore an act of parliament that makes an offence felony, doth conſequently introduce the puniſhment of concealing, that is, miſpriſion of felony; and every offence made felony by act of parliament, includeth miſpriſion. 1 *H. H.* 708.

Infants.

35. An act making a new felony, extendeth not to infants under 14 years of age; but if they be of that age, it binds them. 1 *H. H.* 706.

Life and member.

36. Not only thoſe crimes which are made felonies by the expreſs words of any ſtatute, but alſo thoſe

thoſe which are decreed to have or undergo *judgment of life and member*, do become felonies thereby, whether the word felony were mentioned or not. 1 *Haw.* 107.

37. But an offence ſhall never be made felony, by the conſtruction of any doubtful and ambiguous words of a ſtatute; and therefore if it be only prohibited under pain of *forfeiting body and goods*, or of being *at the king's will for body, lands, and goods*, it ſhall amount unto no more than a high miſdemeanor, puniſhable by impriſonment, or the like. 1 *Haw.* 107. Body and goods.

38. All felonies by the common law have the benefit of clergy; therefore where a ſtatute enacts a felony, and ſays, the offender ſhall *ſuffer death*, clergy lies notwithſtanding, and is never ouſted without expreſs words. 3 *Inſt.* 73. 2 *Haw.* 342. Benefit of clergy.

39. Saving of *dower* in a ſtatute making an offence felony, is ſuperfluous; for by the 1 *Ed.* 6. *c.* 12. Dower is not loſt by the felony of the huſband. *ſ.* 17. Forfeiture of dower.

40. Where a penalty is given to an informer upon a penal ſtatute; he ſhall have no *coſts*, unleſs the ſtatute it ſelf directs it, but he ſhall pay his coſts out of the penalty. 2 *Haw.* 274. Coſts.

Therefore where a juſtice hath power to inflict a pecuniary penalty, not exceeding ſuch a ſum; he may do well in ſuch penalty to conſider the coſts of proſecution.

41. No *damages* can be given to the party grieved, upon an indictment, or any other criminal proſecution; and where by ſtatute damages are given to the party grieved, it ſeems that they cannot be recovered on an indictment at the ſuit of the king, grounded on ſuch ſtatute, unleſs ſuch method of recovering them be expreſly given by the ſtatute; but that they ought to be ſued for in an action on the ſtatute, in the name of the party grieved. But it is every day's practice in the court of king's bench, to induce defendants to make ſatisfaction to proſecutors, for the coſts of the proſecution, and alſo for the damages ſuſtained, by intimating an inclination on that account to mitigate the fine due to the king. 2 *Haw.* 210 Damages.

42. Where

Treble damages.

42. Where a ſtatute gives *treble damages*; the juſtices are not to aſſeſs the damages, and then treble them; but the jury ought to find the damages, and then the juſtices are to treble them. *Cro. Car.* 449.

Diſtreſs and ſale.

43. In all caſes where a juſtice is or ſhall be required by any act of parliament, to iſſue a warrant of diſtreſs for the levying of any penalty inflicted, or any ſum of money directed to be paid by ſuch act; it ſhall be lawful for ſuch juſtice granting ſuch warrant, therein to order and direct the goods and chattels ſo to be diſtrained, to be ſold and diſpoſed of within a certain time to be limited in ſuch warrant, ſo as ſuch time be not leſs than 4 days, nor more than 8 days, unleſs ſuch penalty or ſum of money, together with reaſonable charges of taking and keeping the diſtreſs, be ſooner paid. And the officer making ſuch diſtreſs, may deduct the reaſonable charges of taking, keeping, and ſelling ſuch diſtreſs, out of the money ariſing by ſuch ſale; and the overplus (if any) after ſuch charges, and alſo the ſaid penalty or ſum of money, ſhall be ſatisfied and paid, ſhall be returned on demand to the owner of the goods and chattels ſo diſtrained. (Except only in caſes of diſtreſs for quakers tithes and church rates.) 27 *G.* 2. *c.* 20.

Second offence.

44. An act inflicting a penalty for a *ſecond offence*, muſt always be underſtood, after conviction and judgment for the firſt offence; and the ſecond offence muſt be committed after the firſt conviction, and judgment thereupon given; for it doth not appear to be an offence, until judgment by proceeding of law be given againſt the offender. 2 *Inſt.* 468.

And the indictment for a ſecond offence, muſt recite the record of the firſt conviction; and upon the evidence, the record of the firſt conviction muſt be proved: but the matter of the firſt conviction ſhall never be re-examined, but muſt ſtand for granted. 1 *H. H.* 686.

Abjuration

Abjuration Oath. See Oaths.

Accessary.

I. Of accessaries in general.
II. Of accessaries before the fact.
III. Of accessaries after the fact.
IV. How they are to be proceeded against.

I. Of accessaries in general.

1. ACCESSARY *(quasi* accedens *ad culpam)* is he that is not the chief actor, but one that is concerned in the felony by commandment, aid, or receipt. *Wood* 663. Accessary, what.

2. In the highest capital offence, namely, high treason, there are no accessaries, neither before nor after; for the consenters, aiders, abetters, and knowing receivers and comforters of traytors, are all principals. 1 *Hale's Hist.* 613. In the highest offence, no accessaries.

But yet as to the course of proceeding, it hath been, and indeed ought to be the course, that those who did actually commit the very fact of treason, should be first tried, before those that are principals in the second degree; because otherwise this inconvenience might follow, that the principals in the second degree might be convicted, and yet the principals in the first degree may be acquitted, which would be absurd. 1 *H. H.* 613.

3. In cases that are criminal, but not capital, as in *petit larceny* and *trespass*, there are no accessaries; for the accessaries *before* are in the same degree as principals; and accessaries *after*, by receiving the offenders, cannot be in law under any penalties as accessaries, unless the acts of parliament that induce those penalties do expressly extend to receivers or comforters, as some do. 1 *H. H.* 613. In the lowest offences, no accessaries.

4. It remains therefore, that the business of this title of accessaries refers only to *felonies*, whether by the common law, or by act of parliament. 1 *H. H.* 613. Accessaries only in felony.

5. Concerning which, Lord *Coke* observes generally, that when any offence is felony, either by the common law, or by statute, all accessaries both before and after are incidently included. 3 *Inst.* 59. Accessaries implied in felony.

6. But as to felonies by act of parliament, Lord *Hale* distinguishes thereupon as follows: Regularly (he says) if an act of parliament enact an offence to be felony, tho' it mention nothing of accessaries before or after, yet virtually and consequentially those Accessaries in felonies by statute.

that counsel or command the offence, are accessaries before, and those that knowingly receive the offender are accessaries after. 1 *H. H.* 613.

But if the act of parliament that makes the felony, in express terms comprehend accessaries before, and make no mention of accessaries after, namely, receivers or comforters, there it seems there can be no accessaries after; for the expression of procurers, counsellors, or abetters, all which import accessaries before, make it evident, that the law-makers did not intend to include accessaries after, which is an offence of a lower degree than accessaries before. 1 *H. H.* 614.

And altho' it be generally true, that an act of parliament creating a felony, renders consequentially accessaries before and after within the same penalty, yet the special penning of the act of parliament in such cases, sometimes varies the case: Thus the statute of 3 *H.* 7. *c.* 2. for taking away women, makes the offender, and the procuring and abetting, yea and wittingly receiving also, to be all equally *principal* felonies, and excluded of clergy. Again, the statute of 27 *Eliz. c.* 2. makes the coming in of a jesuit *treason*, the receiving or relieving of him *felony*, the contributing of money to his relief a *præmunire*. So that acts of parliament may diversify the offences of accessary or principal, according to the various penning thereof, and so have done in many cases. 1 *H. H.* 614, 615.

How far accessaries by statute shall have their clergy.

7. Also a statute excluding the principals from the benefit of clergy, doth not thereby exclude the accessaries before or after; neither doth a statute, excluding the accessaries, thereby exclude the principals. 2 *Haw.* 342.

II. Of accessaries before the fact.

Accessary before.

An accessary before the fact committed, is he that being absent at the time of the felony committed, doth yet procure, counsel, command or abet another to commit a felony.

Being absent at the time of the felony committed] For if he is present, he is not an accessary, but a principal.

So also, if divers come to commit an unlawful act, and be present at the time of the felony committed, tho' one of them only doth it, they are *all* principals. *Hale's Pl.* 215.

So if one present move the other to strike; or if one present did nothing, but yet came to assist the party if needful; or if one hold the party while the felon strikes him; or if one present deliver his weapon to the other that strikes; for they are *present*, aiding, abetting, or comforting. *id.* 216.

But if one came casually, not of the confederacy, tho' he hindred not the felony, he is neither principal nor accessary, altho' he apprehend not the felon; but for his negligence he is punishable by fine and imprisonment. *Hale's Pl.* 216. 2 *Haw.* 313.

Also in some cases, even a person absent may be principal; as he that puts poison into any thing to poison another, and leaves it, tho' not present when it is taken: And so it seems all that are

preſent when the poiſon is ſo infuſed, and conſenting thereunto. *Hale's Pl.* 216.

Procure, counſel, command, or abet] But here note ſome diverſities: As,

(1.) *When the principal doth not accompliſh the fact altogether in the ſame ſort, as it was before hand agreed between him and the acceſſary.* And therefore if one command another to lay hold upon a third perſon, and he lays hold upon him and robs him, the perſon commanding is not acceſſary to the robbery; for his command might have been performed without any robbery. *Dalt. c.* 161.

But if the command had been to beat him, and the party commanded doth kill him, or beat him ſo that he dieth thereof; the perſon commanding ſhall be acceſſary to the murder: for it is a hazard in beating a man, that he may die thereof. *Dalt. c.* 161.

(2.) *He that commandeth or counſelleth any evil or unlawful act to be done, ſhall be adjudged acceſſary to all that ſhall enſue upon the ſame evil act, but not to any other diſtinct thing.* As if one command another to ſteal a horſe, and he ſtealeth an ox; or to rob a man by the highway of his money, and he robs him in his houſe of his plate; or to burn ſuch an one's houſe, and he burneth the houſe of another: Theſe are other acts and felonies than he commanded to be done, and therefore he ſhall not be adjudged acceſſary to them. *Dalt. c.* 161.

(3.) *But if a perſon commit the ſame felony, which another did command or counſel to be done, tho' he doth it at another time, or in another place, or in another ſort than was commanded or counſelled, yet here ſuch perſon commanding or counſelling ſhall be acceſſary.* As if he doth counſel to kill a man by poiſon, and he kills him with a dagger; or to kill him by the highway, and he kills him in his houſe; or to kill him one day, and he kills him on another day; in theſe and the like caſes, he ſhall be acceſſary. *Dalt. c.* 161.

(4.) *Thoſe offences which in the conſtruction of law are ſudden and unpremeditated, cannot have any acceſſaries before.* As killing a man by miſadventure, in his own defence, or manſlaughter: For in ſuch caſe there can be no procuring, counſelling, commanding, or abetting. But there may be acceſſaries after. 1 *H. H.* 616.

(5.) It ſeems to be generally agreed, that *he who barely conceals a felony, which he knows to be intended, is guilty only of a miſpriſion of felony, and ſhall not be judged an acceſſary*; for this is not procuring, counſelling, or abetting. 2 *Haw.* 317.

(6.) Alſo, if a man counſels or commands another to kill a perſon, and before he hath killed him, he who counſelled or commanded it, repents, and *countermands* it, charging him not to kill him, and yet after he doth kill him; here ſuch perſon countermanding ſhall not be adjudged acceſſary to the murder: For the law adjudgeth no man acceſſary to a felony before the fact, but ſuch as continue in that mind at the time that the felony is done and executed. *Dalt. c.* 161.

(7.) But if a perſon adviſe a woman to kill her child as ſoon as it ſhall be born, and ſhe kill it in purſuance of ſuch advice; he is an acceſſary to the murder, tho' at the time of the advice, the child not being born, no murder could be committed of it: For

the influence of the felonious advice continuing till the child was born, makes the adviſer as much a felon, as if he had given his advice after the birth. 2 *Haw.* 315.

III. Of acceſſaries after the fact.

Acceſſary after. *Acceſſary after the fact is, where a perſon knowing the felony to be committed by another, relieves, comforts, or aſſiſts the felon.* 1 H. H. 618.

Knowing the felony to be committed] There can be no doubt, but that it is neceſſary that the receiver have notice of the felony, either expreſs or implied, and ſo to be laid in the indictment, that the receiver *knew* that the perſon received by him, had committed the principal felony. 2 *Haw.* 319.

The felony] This, as hath been ſaid, holds place only in *felonies*, and in thoſe felonies, where by the law judgment of death regularly ought to inſue; and therefore not in petit larceny. 1 *H. H.* 618.

And therefore if a perſon do barely receive, comfort, or conceal an offender guilty of any common treſpaſs, or inferior crime of the like nature, tho' he know him to have been guilty, and that there is a warrant out againſt him, yet he is not an acceſſary to the offence; but perhaps in ſuch caſe he may be indictable for a contempt of the law, in hindring the due courſe of juſtice. 2 *Haw.* 311.

Relieves, comforts, or aſſiſts the felon] In the explication of theſe words, ſeveral things are conſiderable;

(1.) Generally, any aſſiſtance whatſoever given to one known to be a felon, in order to hinder his being apprehended, or tried, or ſuffering the puniſhment to which he is condemned, is ſufficient to bring a man within this deſcription, and make him acceſſary to the felony; as where one aſſiſts him with a horſe to ride away with, or with money or victuals to ſupport him in his eſcape. 2 *Haw.* 317.

(2.) But if a man knows that a perſon hath committed a felony, but doth not diſcover it, this doth not make him an acceſſary, but it is a miſpriſion of felony, for which he may be indicted, and upon his conviction fined and impriſoned. 1 *H. H.* 618.

(3.) Alſo if a man ſees another commit a felony, but conſents not, nor yet takes care to apprehend him or to levy hue and cry after him, or upon hue and cry levied doth not purſue him; this is a neglect puniſhable by fine and impriſonment, but it doth not make him an acceſſary. 1 *H. H.* 618.

(4.) In like manner, if one commit a felony, and come to a perſon's houſe before he be arreſted, and ſuch perſon ſuffer him to eſcape without arreſt, knowing him to have committed a felony, this doth not make him acceſſary; but if he take money of the felon to ſuffer him to eſcape, this makes him acceſſary: And ſo it is if he ſhut the fore door of his houſe, whereby the purſuers are deceived, and the felon hath opportunity to eſcape, this makes him an acceſſary; for here is not a bare omiſſion, but an act done by him to accommodate the felon's eſcape. 1 *H. H.* 619.

(5.) Alſo

(5.) Alſo it ſeems to be ſettled at this day, that whoſoever reſcues a felon from an arreſt for the felony, or voluntarily ſuffers him to eſcape, is an acceſſary to the felony. 2 *Haw.* 318.

(6.) But if a felon be in priſon; he that relieves him with neceſſary meat, drink, or cloaths, for the ſuſtentation of life, is not acceſſary. 1 *H. H.* 620.

(7.) So if he be bailed out; it is lawful to relieve and maintain him, for he is ſtill in ſome ſort in cuſtody, and is under a certainty of coming to his trial. 1 *H. H.* 620.

(8.) But if a felon be in gaol; for a man to convey inſtruments to him to break priſon to make an eſcape, or to bribe the gaoler to let him eſcape, makes the party an acceſſary; for tho' common humanity allows every man to afford ſuch perſons neceſſary relief, yet common juſtice prohibits all unlawful attempts to cauſe their eſcapes. 1 *H. H.* 621.

(9.) The ſending a letter in favour of a felon, or adviſing to labour witneſſes not to appear, makes no acceſſary; but it is a high contempt. *Hale's Pl.* 219.

(10.) A man may be acceſſary to an acceſſary, by the receiving of him, knowing him to be an acceſſary to felony. 1 *H. H.* 622.

(11.) If a man hath goods ſtolen, and he receives his goods again, ſimply, without any contract to favour the felon in his proſecution, this is lawful; but if he receive them upon agreement not to proſecute, or to proſecute faintly, this is theftbote, puniſhable by impriſonment and ranſom, but yet it makes him not an acceſſary; but if he take money of him to favour him, whereby he eſcapes, this makes him acceſſary. 1 *H. H.* 619.

(12.) And if any perſon ſhall receive or buy ſtolen goods, knowing them to be ſtolen; or ſhall receive, harbour, or conceal the thieves; he ſhall be deemed an acceſſary, and be tranſported for fourteen years. 3 *W.* *c.* 9. *ſ.* 4. 5 *Ann.* *c.* 31. *ſ.* 5. 4 *Geo.* *c.* 11. And buying the goods at an undervalue, is a preſumptive evidence, that he knew they were ſtolen. 1 *H. H.* 619.

(13.) It ſeems agreed, that the law hath ſuch a regard to that duty, love, and tenderneſs, which a wife owes to her huſband, as not to make her an acceſſary to felony by any receipt given to her huſband; yet if ſhe be any way guilty of procuring her huſband to commit it, it ſeems to make her an acceſſary before the fact, in the ſame manner as if ſhe had been ſole. Alſo it ſeems agreed, that no other relation, beſides that of a wife to her huſband, will exempt the receiver of a felon from being an acceſſary to the felony; from whence it follows, that if a maſter receive a ſervant, or a ſervant a maſter, or a brother a brother, or even a huſband a wife, they are acceſſaries in the ſame manner as if they had been mere ſtrangers to one another. 2 *Haw.* 320.

(14.) But if the wife alone, the huſband being ignorant of it, do receive any other perſon being a felon; the wife is acceſſary, and not the huſband. 1 *H. H.* 621.

(15.) But if the huſband and wife both receive a felon knowingly, it ſhall be judged only the act of the huſband, and the wife ſhall be acquitted. 1 *H. H.* 621.

IV. How they are to be proceeded againſt.

Acceſſaries how far bailable.

1. By 3 *Ed.* 1. *c.* 15. Thoſe who are *accuſed of the receipt of felons, or of commandment, or of force, or of aid of felony done, ſhall be bailable*; but this ſeemeth to be only where it ſtands indifferent whether the party be guilty or innocent; for if there are ſtrong preſumptions of guilt, it ſeemeth that he is not bailable. 2 *Haw.* 102.

In what county to be tried.

2. Where a perſon is feloniouſly ſtricken or poiſoned in one county, and dies thereof in another county, the acceſſary may be indicted in the county where the death ſhall happen. 2 & 3 *Ed.* 6. *c.* 24. *ſ.* 2, 3.

The ſame.

3. Where a murder or felony ſhall be committed in one county, and a perſon ſhall be acceſſary in another county, the acceſſary may be indicted in the county where he was acceſſary: And the judges of aſſize, or two of them, of the county where the offence of the acceſſary ſhall be committed, on ſuit to them made, ſhall write to the keeper of the records where the principal ſhall be convicted, to certify them whether ſuch principal be attainted, convicted, or otherwiſe diſcharged; which he ſhall certify under his ſeal. 2 & 3 *Ed.* 6. *c.* 24. *ſ.* 4.

Acceſſary and principal in the ſame indictment.

4. The acceſſary may be indicted in the ſame indictment with the principal, and that is the beſt and moſt uſual way; but he may be indicted in another indictment, but then ſuch indictment muſt contain the certainty and kind of the principal felony. 1 *H. H.* 623.

Principal to be firſt tried.

5. It ſeemeth that the acceſſary may be put to anſwer before the principal hath appeared; but his plea cannot be tried before ſuch appearance, unleſs he deſires it himſelf; but if he will put himſelf upon his trial, before the principal be tried, he may; and his acquittal or conviction, upon ſuch trial, is good. 2 *Haw.* 322. 1 *H. H.* 623.

But it ſeemeth neceſſary in ſuch caſe to reſpite judgment, till the principal be convicted; for if the principal be after acquitted, that conviction of the acceſſary is annulled, and no judgment ought to be given againſt him: But if he be acquitted of the acceſſary, that acquittal is good, and he ſhall be diſcharged. 1 *H. H.* 623, 624.

Both tried by one inqueſt.

6. It ſeems to be ſettled at this day, that if the principal and acceſſary appear together, and the principal plead the general iſſue, the acceſſary ſhall be put to plead alſo; and that if he likewiſe plead the general iſſue, both may be tried by one inqueſt; but that the principal muſt be firſt convicted; and that the jury ſhall be charged, that if they find the principal not guilty, they ſhall find the acceſſary not guilty. But it ſeems agreed, that if the principal plead a plea in bar, or abatement, or a former acquittal, the acceſſary ſhall not be forced to anſwer, till that plea be determined; for if it be found for the principal, the acceſſary is diſcharged; if againſt the principal, yet he ſhall after plead over to the felony, and may be acquitted. 2 *Haw.* 323. 1 *H. H.* 624.

7. An-

7. Anciently, the acceſſary could not be tried, unleſs the principal were *attainted* (3 *Ed.* 1. *c.* 14.) but by the 1 *Ann. Stat.* 2. *c.* 9. *ſ.* 1. If the principal be convicted, or ſtand mute, or peremptorily challenge above twenty of the jury, the acceſſary may be tried and puniſhed as if the principal had been attainted; and this, altho' the principal be admitted to his clergy, pardoned, or otherwiſe delivered before attainder. Acceſſary may be tried, tho' the principal be not attainted.

8. But in the caſe of ſtolen goods, if the principal cannot be taken, the buyer or receiver may be proſecuted as for a miſdemeanor, to be puniſhed by fine and impriſonment, or other ſuch coporal puniſhment as the court ſhall think fit, altho' the principal be not convicted; which ſhall exempt the offender from being puniſhed as acceſſary, if the principal be afterwards taken and convicted. 1 *Ann. Stat.* 2. *c.* 9. *ſ.* 2. 5 *Ann. c.* 31. *ſ.* 6. Receiver of ſtolen goods may be tried before the principal.

9. It ſeemeth not reaſonable, where a perſon is charged as acceſſary to more than one principal, to try him on the conviction of one, before all of them have appeared; becauſe hereby he may be ſubject to the harſhip and hazard of two trials for his life for the ſame offence, which is contrary to the general courſe of the law. 2 *Haw.* 323. Caſe where a perſon is charged as acceſſary to more than one.

10. If the principal be erroneouſly attaint, yet the acceſſary ſhall be put to anſwer, and ſhall not take advantage of the error in that attainder; but the principal reverſing the attainder, reverſeth the attainder of the acceſſary. 1 *H. H.* 625. Caſe where the principal is erroneouſly attainted.

11. If one perſon be indicted as principal, and another as acceſſary, and both be acquit; yet the perſon indicted as acceſſary may be indicted as principal, and the former acquittal as acceſſary is no bar. 1 *H. H.* 625. Acceſſary acquitted may be indicted as principal.

12. But if a perſon be indicted as principal and acquitted; he ſhall not be indicted as acceſſary before: And if he be, he may plead his former acquittal in bar, for it is in ſubſtance the ſame offence. 1 *H. H.* 626. Principal acquitted may not be indicted as acceſſary before.

13. But if he be indicted as principal, and acquitted; he may be indicted as acceſſary after, for they are offences of ſeveral natures. 1 *H. H.* 626. Principal acquitted may be indicted as acceſſary after.

14. And ſo it is, if he be indicted as acceſſary before, and acquitted; yet for the ſame reaſon he may be indicted as acceſſary after. 1 *H. H.* 626. Acceſſary before, acquitted, may be indicted as acceſſary afte

Indictment of an accessary before the fact, taken from *Coke*'s report of Lord *Sanchar*'s case, 9 *Co.* 117. which, as the prosecution was by the king's special command, was probably drawn by good advice; and on which *Robert Creighton*, esquire, (Lord *Sanchar* of *Scotland*) was convicted and hanged; *viz.*

Middlesex. THE *jurors do present for the lord the king upon their oath, That whereas* Robert Carliel *late of* London, *yeoman, and* James Irweng *late of* London *aforesaid, yeoman, not having god before their eyes, but seduced by the instigation of the devil, the eleventh day of* May *in the year of the reign of our lord* James *by the grace of god of* England, France, *and* Ireland, *king, defender of the faith, and so forth, the tenth, and of* Scotland *the forty-fifth, at* London, *that is to say, in the parish of St.* Dunstan *in the West, and in the ward of* Farringdon without London *aforesaid,* &c. *with force and arms,* &c. *feloniously and of their aforethought malice, in and upon one* John Turner *then and there in the peace of god and of the said lord the king being, made an assault and affray, and the aforesaid* Robert Carliel *a certain gun* [tormentum] *called a pistol, of the value of* 5 s. *then and there charged with gunpowder and a leaden bullet, which gun the said* Robert Carliel *in his right hand then and there had and held, in and upon the aforesaid* John Turner *then and there feloniously, voluntarily, and of his malice forethought, did shoot off and discharge; and the aforesaid* Robert Carliel, *with the leaden bullet aforesaid from the gun aforesaid then and there shot and discharged, the aforesaid* John Turner *in and upon the left part of the breast of him the said* John Turner, *near the left pap of him the said* John Turner, *then and there feloniously struck, giving to the said* John Turner *then and there with the leaden bullet aforesaid out of the gun aforesaid then and there shot off and discharged, in and upon the left part of the breast of him the said* John Turner, *one mortal wound of the breadth of half an inch, and depth of five inches, of which mortal wound the aforesaid* John Turner *at* London *aforesaid, in the parish and ward aforesaid, instantly died: And that* James Irweng *feloniously, and of his forethought malice, then and there was present, aiding, assisting, abetting, comforting and maintaining the aforesaid* Robert Carliel *to the felony and murder aforesaid in form aforesaid to be done and committed; and so the aforesaid* Robert Carliel *and* James Irweng *the aforesaid* John Turner *at* London *aforesaid, in the parish and ward aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of their forethought malice, killed and murdered, against the peace of the lord the now king, his crown and dignity*; And that one *Robert Creighton*, late of the parish of St. *Margaret* in *Westminster* in the county of *Middlesex*, esquire, not having god before his eyes, but being seduced by the instigation of the devil, before the felony and murder aforesaid by the aforesaid *Robert Carliel*

liel and *James Irweng* in manner and form aforeſaid done and committed, that is to ſay, the tenth day of *May* in the year of the reign of our lord *James*, by the grace of god of *England*, *France*, and *Ireland*, king, defender of the faith, and ſo forth, the tenth, and of *Scotland* the forty fifth, the aforeſaid *Robert Carliel*, at the aforeſaid pariſh of St. *Margaret* in *Weſtminſter* aforeſaid, in the county of *Middleſex* aforeſaid, to the felony and murder aforeſaid, in manner and form aforeſaid to be done and committed, maliciouſly, felonioufly, voluntarily and of his forethought malice, did incite, move, abet, counſel and procure; againſt the peace of the ſaid lord the king that now is, his crown and dignity.

If after the fact, then the form may be thus;

And that A. O. *late of* ——— *in the county of* ——— *yeoman, well knowing the ſaid (offender) to have done and committed the ſaid felony in manner and form aforeſaid, afterwards, to wit, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforeſaid in the county aforeſaid, with force and arms, him the ſaid* ——— *did then and there felonioufly, and of his malice forethought, receive, aid, and comfort; againſt the peace of the ſaid lord the king that now is, his crown and dignity.*

Action popular. See **Information.**

Adultery. See **Lewdneſs.**

Addition.

TO prevent the inconvenience of troubling one perſon for another, it is enacted by 1 *H.* 5. *c.* 5. that *in every original writ of actions perſonal, appeals, and indictments, in which the exigent ſhall be awarded, to the names of the defendants additions ſhall be made, of their eſtate or degree or miſtery, and of the towns, or hamlets, or places, and counties, of the which they were, or be: And if by proceſs upon the ſaid original writs, appeals, or indictments, in the which the ſaid additions be omitted, any outlawries be pronounced, they ſhall be void; and before the outlawries pronounced, the ſaid writs and indictments ſhall be abated by the exception of the party.*

In which the exigent ſhall be awarded] The *exigent* is a writ whereby the ſheriff is commanded to proclaim the party in the county court, in order to his being outlawed. And by theſe words the act extendeth only to caſes where proceſs of outlawry may be awarded; and therefore it extendeth not to an indictment for incroaching on a highway, becauſe in that caſe proceſs of outlawry lieth not, but a diſtreſs. *Croke Eliz.* 148.

To

Addition.

To the names of the defendants] Regularly by the common law, every natural man, having no name of dignity, ought to be named in all originals and other ſuits by his chriſtian name and ſirname, and that, before this act, ſufficed; but if he had a name of inferior dignity (as knight, or banneret) he ought to be named by his chriſtian name and ſirname, and by the addition of his name of dignity. 2 *Inſt.* 666.

If there be a corporation of one ſole perſon, that hath a fee ſimple, and may have a writ of right, he may be named by the common law by his chriſtian name without any ſirname, as *John* Biſhop of *P.* 2 *Inſt.* 666.

If it be a corporation aggregate of many able perſons, as mayor and commonalty, dean and chapter, the mayor or dean need not be named by his chriſtian name, becauſe that ſuch a corporation ſtandeth in lieu both of the chriſtian name and ſirname. 2 *Inſt.* 666.

A duke, marquiſs, earl, viſcount, or baron might by the common law be named by his chriſtian name, and by the name of his dignity; as *John* Duke of *M.* 2 *Inſt.* 666.

Additions ſhall be made] The addition as well of the eſtate, degree, or miſtery, as the town, hamlet, or place, ought by force of this act to be alledged in the firſt name; for an addition after the *alias dictus* is ill: As for inſtance, where the indictment was againſt *W. R.* otherwiſe called *W. R.* of *H.* for without the *alias dictus* there is no addition of the vill; and if the party is not ſufficiently named in the firſt part, the *alias* cannot aid or help it. 2 *Inſt.* 669. 3 *Salk.* 20.

Where there are ſeveral defendants of different names, and the ſame addition, it is ſafeſt to repeat the addition after each of their names, applying it particularly to every one of them. 2 *Haw.* 187.

Where a father hath the ſame name and the ſame addition with a defendant being his ſon, the action is abateable unleſs it add the addition of *the younger* to the other additions; but where the father is the defendant, it is ſaid that there is no need of the addition of *the elder*. 2 *Haw.* 187.

Of their eſtate or degree] Eſquire is a good addition; and the ſons of all peers and lords of parliament in the life of their fathers, are in law eſquires, and ſo to be named. Alſo the eldeſt ſon of a knight is an eſquire. 2 *Inſt.* 667.

And it ſeems clear, that no one can be well deſcribed by the addition of a temporal dignity of any other nation beſides our own; becauſe no ſuch dignity can give a man a higher title here, than that of an eſquire. 2 *Haw.* 187.

Gentleman and gentlewoman are good additions; and if a gentlewoman be named ſpinſter, ſhe may abate and quaſh the writ or indictment. 2 *Inſt.* 668.

A gentleman by reputation, that is neither gentle by birth, nor by office, nor by creation, but commonly called gentleman, and known by that name, is a ſufficient addition; but if he be named yeoman, he cannot quaſh the indictment. 2 *Inſt.* 668.

Lord

Lord *Coke* ſays, he that hath taken any degree in either of the univerſities, may be named by that degree without queſtion. 2 *Inſt.* 668. But this is doubted by others. 2 *Haw.* 187.

Clerk is a good addition of a clergyman. 2 *Inſt.* 668.

Yeoman and labourer are good additions, and are applied only to the man, and not to the woman. 2 *Haw.* 188.

Widow or ſinglewoman, or (as ſome ſay) wife of ſuch a one, are all of them good additions of the eſtate and degree of a woman; but no ſuch like addition is good, for the eſtate and degree of a man. And ſpinſter is a good addition for the eſtate and degree of a woman, and perhaps alſo for that of a man. 2 *Haw.* 188.

Or miſtery] This includeth all lawful arts, trades, and occupations, as taylor, merchant, mercer, pariſh clerk, ſchoolmaſter, huſbandman, labourer, and the like. 2 *Haw.* 188.

But ſervant, groom, or farmer, are not additions within this act, becauſe they are not of any miſtery. And chamberer, butler, pantler, or the like, are additions of offices, and not of any miſtery or occupation. 2 *Inſt.* 668.

Neither doth this act extend to unlawful practices, as extortioner, maintainer, thief, vagabond, heretick, and ſuch like. 2 *Haw.* 188.

If a man have divers arts, trades, or occupations, he may be named by any of them; but if a gentleman by birth be a tradeſman, he ſhall not be named by his trade, but by the degree of gentleman, becauſe it is worthier than the addition of any miſtery. And in general a man ſhall be named by his worthieſt title of addition. 2 *Inſt.* 668, 669.

And of the towns or hamlets] If there be two towns in a county of the ſame principal name, with different additions to diſtinguiſh them from one another, as *Great Dale* and *Little Dale*, or *Upper Dale* and *Lower Dale*, and the defendant be named only of the principal town without any addition, as of *Dale* only, the defendant may plead that there are two *Dales* in the ſame county, and none without an addition. But if there be two towns of the ſame name in a county, without any addition to diſtinguiſh them, it may be ſufficient in ſuch caſe to name the defendant generally of either of ſuch towns, without adding any thing to diſtinguiſh it from the other. 2 *Haw.* 189.

If the defendant live in a hamlet of a town, it is ſaid to be in the election of the party to name him either of the hamlet or of the town. 2 *Haw.* 189.

But the addition of a pariſh, if there be two or more towns in it, is not good; but if there be but one town, the addition of pariſh is good. 2 *Inſt.* 669.

The addition of the place of habitation of a wife, is ſufficiently ſhewn, by ſhewing that of the huſband; becauſe it ſhall be intended that the wife lives where the huſband does. 2 *Haw.* 190.

Or places] If the defendant lives in a place known by a ſpecial name, and lying out of any town or hamlet, he may be well named of ſuch place; but if he live in any place known within a

town

town or hamlet, it is ſaid to be ſafeſt to name him of the town or hamlet. 2 *Haw.* 189, 190.

Of the which they were, or be] The addition of the eſtate, degree, or miſtery, ought to be as the defendant was of at the day of the indictment brought, and not *late* of ſuch a degree or miſtery; but it is a good addition to name the defendant *late* of ſuch a town or place, becauſe men do often remove their habitation. 2 *Inſt.* 670.

Shall be void] This being a judgment in law, is interpreted to be made void by a writ of error, or by the plea of the party coming in upon a *capias utlagatum*; for tho' the ſtatute ſaith they ſhall be void, yet they are but voidable by a writ of error or plea. 2 *Inſt.* 670.

By the exception of the party] But if the defendant appeareth upon proceſs, and plead, taking no advantage thereof by exception, he hath loſt the benefit hereof: But it ſeemeth that the bare appearance of the party, without plea, doth not ſalve the want of a good addition. 2 *Haw.* 190.

Advertiſement. See Stamps.

Affray.

I. What is an affray.
II. How far it may be ſuppreſſed by a private perſon.
III. How far by a conſtable.
IV. How far by a juſtice of the peace.
V. Puniſhment of an affray.

I. What is an affray.

1. AN *affray is a publick offence to the terror of the king's ſubjects, and is an* Engliſh *word, and ſo called, becauſe it affrighteth and maketh men afraid.* 3 Inſt. 158.

2. From whence it ſeemeth clearly to follow, that there may be an *aſſault*, which will not amount to an *affray*; as where it happens in a private place, out of the hearing or ſeeing of any, except the parties concerned, in which caſe it cannot be ſaid to be to the terror of the people. 1 *Haw.* 134.

3. Alſo it is ſaid, that no quarrelſome or threatning words whatſoever, ſhall amount to an affray; and that no one can juſtify laying his hands on thoſe who ſhall barely quarrel with angry words, without coming to blows; yet it ſeemeth, that the conſtable may, at the requeſt of the party threatned, carry the perſon who threatens to beat him, before a juſtice in order to find ſureties. 1 *Haw.* 135.

4. Alſo,

4. Alſo, it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the meſſenger of ſuch a challenge; or even barely to endeavour to provoke another to ſend a challenge, or to fight; as by diſperſing letters to that purpoſe, full of reflections, and inſinuating a deſire to fight. 1 *Haw.* 135.

5. But altho' no bare words, in the judgment of law, carry in them ſo much terror as to amount to an affray, yet it ſeems certain, that in ſome caſes there may be an affray, where there is no actual violence; as where a man arms himſelf with dangerous and unuſual weapons, in ſuch a manner as will naturally cauſe a terror to the people; which is ſaid to have been always an offence at the common law, and is ſtrictly prohibited by ſtatute: For by 2 *Ed.* 3. *c.* 3. it is enacted, that *no man of what condition ſoever, except the king's ſervants in his preſence, and his miniſters in executing their office, and ſuch as be in their company aſſiſting them, and alſo upon a cry made for arms to keep the peace, ſhall come before the king's juſtices, or other of the king's miniſters doing their office, with force and arms, nor bring any force in affray of peace, nor go nor ride armed, by night or day, in fairs or markets, or in the preſence of the king's juſtices, or other miniſters, or elſewhere; upon pain to forfeit their armour to the king, and their bodies to priſon at the king's pleaſure. And the king's juſtices in their preſence, ſheriffs and other miniſters in their bailiwicks, lords of franchiſes and their bailiffs in the ſame, and mayors and bailiffs of cities and boroughs within the ſame, and borough holders, conſtables, and wardens of the peace within their wards, ſhall have power to execute this act. And the judges of aſſize may puniſh ſuch officers as have not done their duty herein.*

Upon a cry made for arms to keep the peace] It is holden upon theſe words of exception, that no perſon is within the intention of this ſtatute, who arms himſelf to ſuppreſs dangerous rioters, rebels, or enemies, and endeavours to ſuppreſs or reſiſt ſuch diſturbers of the peace and quiet of the realm. 1 *Haw.* 136.

In affray of peace] *En effrayer de la pees*; Lord *Coke* has it *pais*, of the country, or the people; and ſo, he obſerves, that the writ grounded upon this ſtatute ſaith, In quorundam *de populo* terrorem; and therefore the printed book, *in affray of peace*, ought to be amended. 3 *Inſt.* 158.

And it is holden upon theſe words, that no wearing of arms is within the meaning of this ſtatute, unleſs it be accompanied with ſuch circumſtances as are apt to terrify the people; from whence it ſeems clearly to follow, that perſons of quality are in no danger of offending againſt this ſtatute, by wearing common weapons, or having their uſual number of attendants with them, for their ornament or defence, in ſuch places, and upon ſuch occaſions, in which it is the common faſhion to make uſe of them, without cauſing the leaſt ſuſpicion of an intention to commit any act of violence, or diſturbance of the peace. 1 *Haw.* 136.

Nor to go nor ride armed] It is holden, that a man cannot excuſe the wearing ſuch armour in publick, by alledging that ſuch a one threatned him, and that he wears it for the ſafety of his perſon from his aſſault; but it hath been reſolved, that no one ſhall incur the penalty of the ſaid ſtatute for aſſembling his neighbours and friends in his own houſe, againſt thoſe who threaten to do him any violence therein, becauſe a man's houſe is his caſtle. 1 *Haw.* 136.

Their bodies to priſon] The ſtatute of 20 *R.* 2. *c.* 1. adds a fine likewiſe.

Wardens of the peace] It is holden, that any juſtice of the peace, or other perſon who is impowered to execute this ſtatute, may proceed thereon *ex officio*; and if he find any perſon in arms, contrary to the form of the ſtatute, he may ſeize the arms, and commit the offender to priſon; and that he ought alſo to make a record of the whole proceeding, and certify the ſame into the exchequer. 1 *Haw.* 135.

II. How far it may be ſuppreſſed by a private perſon.

1. It ſeems agreed, that any one who ſees others fighting, may lawfully part them, and alſo ſtay them till the heat be over, and then deliver them to the conſtable to be carried before a juſtice, to find ſureties for the peace. 1 *Haw.* 136.

2. And the law doth encourage him hereunto; for if he receives any harm by the affrayers, he ſhall have his remedy by law againſt them; and if the affrayers receive hurt, by the endeavouring only to part them, the ſtanders-by may juſtify the ſame, and the affrayers have no remedy by law. 3 *Inſt.* 158.

3. But if either of the parties be ſlain, or wounded, or ſo ſtricken that he falleth down for dead; in that caſe the ſtanders-by ought to apprehend the party ſo ſlaying, wounding, or ſtriking, or to endeavour the ſame by hue and cry; or elſe for his eſcape they ſhall be fined and impriſoned. 3 *Inſt.* 158.

III. How far by a conſtable.

1. It ſeems agreed, that a conſtable is not only impowered, as all private perſons are, to part an affray which happens in his preſence; but is alſo bound at his peril to uſe his beſt endeavours to this purpoſe; and not only to do his utmoſt himſelf, but alſo to demand the aſſiſtance of others, which if they refuſe to give him, they are puniſhable with fine and impriſonment. 1 *Haw.* 137.

2. And it is ſaid, that if a conſtable ſee perſons either actually engaged in an affray, as by ſtriking or offering to ſtrike, or drawing their weapons, or the like; or upon the very point of entering upon an affray, as where one ſhall threaten to kill, wound, or beat another, he may either carry the offender before a juſtice, to find ſureties for the peace, or he may impriſon him of his own authority for a reaſonable time, till the heat ſhall be over, and alſo afterwards detain him till he find ſuch ſurety by obligation:

But

But it ſeems, that he has no power to impriſon ſuch an offender in any other manner, or for any other purpoſe; for he cannot juſtify the committing an affrayer to gaol, till he ſhall be puniſhed for his offence: And it is ſaid, that he ought not to lay hands on thoſe, who barely contend with hot words, without any threats of perſonal hurt; and that all which he can do in ſuch caſe, is to command them under pain of impriſonment to avoid fighting. 1 *Haw.* 137.

3. But he is ſo far intruſted with a power over all actual affrays, that tho' he himſelf is a ſufferer by them, and therefore liable to be objected againſt, as likely to be partial in his own cauſe, yet he may ſuppreſs them; and therefore, if an aſſault be made upon him, he may not only defend himſelf, but alſo impriſon the offender, in the ſame manner as if he were no way a party. 1 *Haw.* 137.

4. And if an affray be in an houſe, the conſtable may break open the doors to preſerve the peace; and if affrayers fly to an houſe, and he follow with freſh ſuit, he may break open the doors to take them. 1 *Haw.* 137.

5. But it is ſaid, that a conſtable hath no power to arreſt a man for an affray done out of his own view, without a warrant from a juſtice, unleſs a felony were done, or likely to be done; for it is the proper buſineſs of a conſtable to preſerve the peace, and not to puniſh the breach of it. 1 *Haw.* 137.

IV. How far by a juſtice of the peace.

There is no doubt, but that he may and muſt do all ſuch things to that purpoſe, which a private man or conſtable are either enabled or required by the law to do: But it is ſaid, that he cannot without a warrant authorize the arreſt of any perſon for an affray out of his own view; yet it ſeems clear, that in ſuch caſe he may make his warrant to bring the offender before him, in order to compel him to find ſureties for the peace. 1 *Haw.* 137.

V. Puniſhment of an affray.

All affrays in general are puniſhable by fine and impriſonment. 1 *Haw.* 138.

And they are inquirable in the leet, as common nuſances. 3 *Inſt.* 158.

Warrant to apprehend affrayers.

Weſtmorland. { To the conſtable of——

WHEREAS A. I. *of*——*yeoman, hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that on the*——*day of*——*in the*——*year of the reign of*——A. O. *of*——*yeoman, and* B. O. *of*——*yeoman, at*——*in the ſaid county, in a tumultuous manner*

ner made an affray, wherein the perſon of the ſaid A. I. *was beaten and abuſed by them the ſaid* A. O. *and* B. O. *without any lawful or ſufficient provocation given to them, or to either of them, by him the ſaid* A. I. *Theſe are therefore to command you forthwith to apprehend the ſaid* A. O. *and* B. O. *and bring them before me, or ſome other of his ſaid majeſty's juſtices of the peace for the ſaid county, to anſwer the premiſſes, and to find ſureties as well for their perſonal appearance at the next general quarter-ſeſſions of the peace to be holden for the ſaid county, then and there to anſwer to an indictment to be preferred againſt them by the ſaid* A. I. *for the ſaid offence, as alſo for their keeping the peace in the mean time, towards his ſaid majeſty and all his liege people, and eſpecially towards him the ſaid* A. I. *Hereof fail not, as you will anſwer the contrary at your peril. Given under my hand and ſeal at ——— in the ſaid county, the ——— day of,* &c.

Indictment for an affray.

THE *jurors for our lord the king, upon their oath preſent, that* A. O. *of ——— in the county of ——— taylor, and* B. O. *of ——— in the ſaid county, blackſmith, with force and arms, on the ——— day of ——— in the ——— year of the reign of our ſovereign lord* George *the ſecond, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at ——— aforeſaid in the county aforeſaid, being arrayed and unlawfully aſſembled together in a warlike manner, did make an affray, to the terror and diſturbance of divers of the ſubjects of our ſaid ſovereign lord the king then and there being, and to the evil example of all other the ſubjects of our ſaid ſovereign lord the king, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Alamodes. See Silks.

Ale and Beer. See Exciſe.

Alehouſes.

Alehouſes.

For matters relating to the *exciſe* of beer and ale, ſee title Exciſe.

I. Concerning inns and alehouſes in general.
II. Selling ale without licence.
III. Licenſing alehouſes.
IV. Recognizance, and forfeiture thereof.
V. To what places the licence ſhall extend.
VI. How long the licence ſhall continue in force.
VII. Offences in brewing of ale.
VIII. Innkeepers obliged to receive gueſts.
IX. Soldiers quartered in alehouſes.
X. Concerning ale veſſels, and the meaſure of ale.
XI. Conſpiring to enhance the price of ale.
XII. Selling in veſſels of plate.
XIII. Innkeeper ſuffering tipling.
XIV. Perſons guilty of tipling.
XV. Concerning drunkenneſs.
XVI. Detaining goods for the reckoning.
XVII. Goods of a gueſt ſtolen out of an inn.
XVIII. Gueſts ſtealing goods.

I. Concerning inns and alehouſes in general.

1. EVERY inn is not an alehouſe, nor is every alehouſe an inn: but if an inn uſes common ſelling of ale, it is then alſo an alehouſe; and if an alehouſe lodges and entertains travellers, it is alſo an inn. Difference between inns and alehouſes.

2. It was reſolved by all the judges, that any perſon might erect an inn to lodge travellers, without any licence or allowance for ſuch erection. *Dalt. c.* 56. *Black.* 170. Licence to erect inns.

3. But it ſeems to be agreed, that the keeper of an inn may by the common law be indicted and fined, as being guilty of a publick nuſance, if he uſually harbour thieves, or perſons of ſcandalous reputation, or ſuffer frequent diſorders in his houſe, or take exorbitant prices, or ſet up a new inn in a place where there is no manner of need of one, to the hindrance of other ancient and well governed inns, or keep it in a place in reſpect of its ſituation wholly unfit for ſuch a purpoſe. 1 *Haw.* 225. Inn indictable.

Innkeeper ſelling ale.

4. And if an inn uſeth the trade of an ale-houſe, as almoſt all innkeepers do, it ſhall be within the ſtatutes made about alehouſes. *Dalt.* 133. *Black.* 170.

Inn to be licenſed.

5. It hath been alſo agreed for law, that innkeepers ought to have licence, and be bound by recognizance for keeping good order, as alehouſekeepers are. *Dalt.* 24.

Power of juſtices by the commiſſion.

6. By the commiſſion of the peace, two juſtices (1 *Q.*) may inquire of innholders, and of all and ſingular other perſons, who ſhall offend in the abuſe of weights or meaſures, or in the ſale of victuals, againſt the form of the ordinances in that behalf made.

II. Selling ale without licence.

Here are three methods of proceeding againſt an offender, (1) by the juſtices in ſeſſions, (2) by two juſtices out of ſeſſions, and (3) by one juſtice out of ſeſſions.

By the juſtices in ſeſſions.

1. By the juſtices in ſeſſions:—*The juſtices of the peace, or two of them at the leaſt* (1 *Q.*) *ſhall have full power and authority, to remove, diſcharge, and put away common ſelling of ale and beer in common alehouſes and tipling houſes, in ſuch towns and places where they ſhall think meet and convenient.* 5 & 6 Ed. 6. c. 25. ſ. 1.

But this muſt be underſtood of houſes unlicenſed only. 1 *Salk.* 46.

And by this clauſe the juſtices in their ſeſſions have power to ſuppreſs ſuch unlicenſed alehouſes, and need not proceed by information or conviction; but they have thereby a diſcretionary power to ſuppreſs them, without ſhewing any cauſe or miſdemeanor. *L. Ray.* 1303.

And here it is to be obſerved, that there is a difference between ſuppreſſing an unlicenſed alehouſe, and one that is licenſed. Where an alehouſe is licenſed, the juſtices, to ſuppreſs it, muſt either proceed upon the recognizance, the condition whereof muſt at leaſt be broken; and therefore his having another trade, or being a bailiff, can be no cauſe in ſuch caſe: or by indictment, and then there muſt be ſuch diſorders as prove a nuſance. But where an alehouſe is unlicenſed, the juſtices may ſuppreſs it at diſcretion; for on the denial of a licence no appeal lies, and this ſtatute which gives the juſtices a power to ſuppreſs *where they ſhall think convenient*, would ſignify nothing if it did not extend to ſuch caſes; for it cannot extend to alehouſes that are licenſed, becauſe they are not puniſhable without a breach of the recognizance. And as to thoſe that are unlicenſed, if they be ſuppreſſed, the want of a licence can only come in queſtion in ſuch caſe, and not the reaſon and cauſe why it was denied. 1 *Salk.* 45, 46.

By two juſtices out of ſeſſions.

2. Next, by two juſtices out of the ſeſſions:—If any perſon unlicenſed, ſhall obſtinately, and upon his own authority, take upon him to keep a common alehouſe or tipling houſe, or ſhall contrary to the commandment of the ſaid juſtices, or two of them, uſe commonly ſelling of ale and beer (except in fairs); the ſaid juſtices or two of them (1 *Q.*) ſhall for every ſuch offence commit

mit every ſuch perſon ſo offending to the common gaol, there to remain without bail or mainprize for three days:

And before his deliverance, the ſaid juſtices ſhall take recognizance of him, with two ſureties, that he ſhall not keep any common alehouſe or tipling houſe, or uſe commonly ſelling of ale or beer, as by the diſcretion of the ſaid juſtices ſhall ſeem convenient:

And the ſaid juſtices ſhall make certificate of every ſuch recognizance and offence, at the next quarter ſeſſions; which certificate ſhall be a ſufficient conviction of the ſame offence:

And the juſtices, upon the ſaid certificate made, ſhall in open ſeſſions aſſeſs the fine for every ſuch offence at 20*s.* 5 & 6 *Ed.* 6. *c.* 25. *ſ.* 4, 5.

3. Next, as to the method of proceeding by one juſtice: This may be either by the ſtatute of the 3 *C.* *c.* 3. or by the ſtatute of the 26 *G.* 2. *c.* 31. By one juſtice, on the 3 G. c. 3.

The method of proceeding on the 3 *C.* *c.* 3. is as follows: If any perſon ſhall, upon his own authority, not being thereunto lawfully licenſed, take upon him to keep a common alehouſe or tipling houſe, or uſe commonly ſelling of ale or beer, cyder or perry (except in fairs); he ſhall for the firſt offence forfeit 20*s.* to the poor; the ſame offence being viewed by any mayor or juſtice, or confeſſed by the offender, or proved by the oath of two witneſſes: To be levied by the conſtables or churchwardens by warrant of diſtreſs; and for default of ſatisfaction in three days, the diſtreſs to be appraiſed and ſold, rendring the overplus: And if he have not ſufficient goods whereon to levy, or ſhall not pay the 20*s.* in ſix days after conviction, ſuch mayor or juſtice ſhall commit him to the conſtable or other inferior officer, where the offence ſhall be committed, or the party apprehended, to be openly whipped for the ſaid offence, as the ſaid juſtice ſhall appoint: And if the conſtable, or other inferior officer, ſhall neglect to execute the ſaid precept or warrant, or do refuſe, or do not execute the puniſhment by himſelf or ſome other; the ſaid mayor or juſtice may commit him to the common gaol, till the offender ſhall be puniſhed and whipped by himſelf or ſome by his procurement, or until he hath paid the ſum of 40*s.* to the poor for his contempt. For the ſecond offence, the ſaid mayor or juſtice ſhall commit ſuch perſon keeping an alehouſe without licence, to the houſe of correction, for one month, and to be dealt with as an idle, lewd, and diſorderly perſon. And if he ſhall again offend, he ſhall, on conviction as aforeſaid, be committed in like manner to the houſe of correction, there to remain until by the order of the juſtices in ſeſſions he ſhall be delivered from thence. But he ſhall not be puniſhed both upon this act, and upon the 5 & 6 *Ed.* 6. but upon one of them only.

The other method of proceeding by one juſtice, is on the ſtatute of the 26 *Geo.* 2. *c.* 31. and is as follows: By one juſtice, on the 26 G. 2. c. 31.

Where any juſtice ſhall ſuſpect that any perſon ſells without licence, he may call him before him, and alſo any exciſe officer or gauger to produce his ſtock book or other account of the charge or ſurvey of ſuch ſuſpected perſon, and may examine ſuch officer

on oath in what manner he charges ſuch perſon, and how ſuch perſon pays the duties; and if it ſhall appear by ſuch ſtock book or account, or oath of the officer, that ſuch perſon is ſurveyed as a victualler or retailer, and is charged with the ſame duties that victuallers and retailers are charged with and pay for any the liquors aforeſaid, and is not intitled to the allowance or abatement given to common brewers, he ſhall be deemed an alehouſekeeper, victualler, retailer, or ſeller thereof, as if it had been proved by two witneſſes. *ſ.* 9.

And if any perſon ſhall make information before one juſtice, and ſhew probable cauſe that he ſuſpects that any perſon ſells without licence, the juſtice may call him before him (A), and ſummon any other perſon as evidence; and if the perſon ſummoned refuſe to appear, or appear and refuſe to give evidence upon oath, he ſhall forfeit 10*l.* by diſtreſs, by warrant of ſuch juſtice, to be paid to the overſeers for the uſe of the poor where the offender lives. *ſ.* 10.

And every perſon ſo convicted (B) of ſelling without licence, ſhall for the firſt offence forfeit 40*s.* for the ſecond offence 4*l.* and for the third and every other offence 6*l.* by diſtreſs, by warrant of the juſtice convicting the offender (C), half to the informer, and half to the poor; and if no ſufficient diſtreſs ſhall be found, the juſtice ſhall commit him (D) to the gaol or houſe of correction, for one month, for the firſt offence; for two months, for the ſecond; and for the third, until he ſhall be diſcharged by order of ſeſſions. 26 *G.* 2. *c.* 31. *ſ.* 12. 28 *G.* 2. *c.* 19. *ſ.* 2.

And any perſon may be a witneſs in ſuch caſe, notwithſtanding he pays to the poor of any place where the offence ſhall be committed. 26 *G.* 2. *c.* 31. *ſ.* 17.

But perſons puniſhed by this act ſhall not be puniſhed by any former act; and perſons puniſhed by any former act, ſhall not be puniſhed by this act. *ſ.* 14.

Penalty of ſelling ale to a perſon unlicenſed.

4. By the ſtatute of the 4 *J.* *c.* 4. If any perſon ſhall ſell or deliver any beer or ale, to any perſon that ſhall then ſell beer or ale as a common tipler or alehouſekeeper, the ſame perſon not having licence to ſell ale or beer (except it be for the uſe of his houſhold only); he ſhall forfeit for every barrel 6*s.* 8*d.* and ſo proportionably for other quantities; half to the poor, and half to him that ſhall ſue in ſeſſions, by action of debt, information, indictment, or preſentment.

III. Licenſing alehouſes.

By two juſtices at a general meeting.

1. By the 5 & 6 *Ed.* 6. *c.* 25. any two juſtices, 1 *Q.* might licenſe alehouſes; but now by the 2 *G.* 2. *c.* 28. and 26 *G.* 2. *c.* 31. it is enacted, that whereas many inconveniences have ariſen from perſons being licenſed to keep inns and common alehouſes, by juſtices, who living remote from the places of abode of ſuch perſons, may not be truly informed as to the occaſion or want of ſuch inns or common alehouſes, or the characters of the perſons applying for licences to keep the ſame; therefore from henceforth no licence ſhall be granted to any perſon to keep a common inn

or alehouſe, but at a general meeting of the juſtices acting in the diviſion where the ſaid perſon dwells, to be holden for that purpoſe, on the firſt day of *September* yearly, or within twenty days after, and not at any other time. Excepting, that this ſhall not alter the power or the time of granting licences, in cities and towns corporate. 2 *G.* 2. *c.* 28. *ſ.* 11, 12. 26 *G.* 2. *c.* 31. *ſ.* 4. 16.

At a general meeting of the juſtices holden for the diviſion] But it is not neceſſary to ſet forth ſpecially in the licence, that it was granted at a general meeting of the juſtices holden for the diviſion; and therefore a conviction for keeping an alehouſe without ſuch licence, is not good upon the evidence of the licence only, but there muſt be other evidence. *M.* 11 *G.* 2. *King* and *Bryan*, *Seſſ. Ca. Vol.* 2. 183. *Andr.* 81.

The meeting how to be aſcertained.

2. And the day and place for granting licences ſhall be appointed by two or more juſtices for the diviſion, by warrant (E) under their hands and ſeals, at leaſt ten days before ſuch meeting, directed to the high conſtables, requiring them to order (F) their petty conſtables, or other peace officers, to give notice to the ſeveral innkeepers and alehouſekeepers within their reſpective conſtablewicks, of the day and place of ſuch meeting. And all licences granted at any other time or place ſhall be void. 26 *G.* 2. *c.* 31. *ſ.* 4.

Certificate of perſons to be licenſed.

3. And no licence ſhall be granted to any perſon not licenſed the year preceding (except in cities or towns corporate) unleſs he produce a certificate under the hands of the miniſter and the major part of the churchwardens and overſeers, or elſe of three or four reputable and ſubſtantial houſholders of the place, ſetting forth that ſuch perſon is of good fame and of ſober life and converſation; and it ſhall be mentioned in ſuch licence that ſuch certificate was produced, otherwiſe the licence ſhall be void. 26 *G.* 2. *c.* 31. *ſ.* 2, 16.

Except in cities and towns corporate] In cities and towns corporate, ſuch certificate is not neceſſary, becauſe it is ſuppoſed that the perſons to be licenſed are for the moſt part ſufficiently known to the juſtices. Nevertheleſs, altho' a certificate in ſuch places is not requiſite by this act, yet it is diſcretionary in the juſtices whom they will licenſe, and a *mandamus* in ſuch caſe will not lie to compel the juſtices to licenſe any perſon; and on a conviction for ſelling without licence, the want of ſuch licence can only come in queſtion, and not the reaſon why it was denied. *M.* 4 *G.* 2. *John Giles*'s caſe, *Strange* 881.

What juſtices are prohibited from granting licences.

4. By the 26 *G.* 2. *c.* 31. No juſtice of the peace, being a common brewer of ale or beer, innkeeper, or diſtiller, or a ſeller of or dealer in ale or ſpirituous liquors, or intereſted in any the ſaid trades, or being a victualler or malſter, ſhall be capable, or have any power to grant licences for ſelling ale or beer or any other liquors, but the ſame ſhall be void. *ſ.* 11.

Stamp.

5. And all mayors, townclerks, and other perſons whom it may concern, ſhall make out ale licences (G) duly ſtamped (on a 12*d.* ſtamp, 9 *Ann. c.* 23. *ſ.* 23.) before the recognizance be

taken; on pain of 10*l.* half to the king, and half to the proſecutor, with coſts. 6 *G. c.* 21. *ſ.* 56. 1 *Ann. ſtat.* 2. *c.* 22. *ſ.* 6.

Licence for ſpirituous liquors.

6. And no perſon ſhall retail any diſtilled ſpirituous liquors, or ſtrong waters, without a licence from the officer of exciſe taken out ten days before, for which he ſhall pay 40*s.* yearly. 16 *G.* 2. *c.* 8. *ſ.* 8. 24 *G.* 2. *c.* 40. *ſ.* 9.

And ſuch perſons ſhall be firſt licenſed to ſell ale or ſpirituous liquors by two or more juſtices of the peace. 16 *G.* 2. *c.* 8. *ſ.* 11.

And the juſtice's clerk ſhall have 2*s.* 6*d.* and no more, for ſuch licence. 9 *G.* 2. *c.* 23. *ſ.* 14. 24 *G.* 2. *c.* 40. *ſ.* 28, 29.

Which ſaid licence for retailing ſpirituous liquors, is treated of more at large under the article concerning ſpirituous liquors in title Exciſe.

Licence for made wines.

7. No perſon ſhall ſell made wines, without a licence from two juſtices; for which he ſhall pay their clerk 2*s.* 6*d.* and none ſhall be granted but to keepers of victualling houſes, inns, coffee houſes, or alehouſes. 10 *G.* 2. *c.* 17. *ſ.* 10, 11.

IV. Recognizance, and forfeiture thereof.

Recognizance.

1. On granting licences for keeping any common alehouſe or tipling houſe, the perſon licenſed ſhall enter into a recognizance in 10*l.* with two ſureties in 5*l.* each, or one ſurety in 10*l.* (H) as well againſt the uſing of unlawful games, as alſo for the uſing and maintenance of good order and rule to be had and uſed within the ſame, as by their diſcretion ſhall be thought neceſſary and convenient; and if ſuch perſon ſhall be hindred thro' ſickneſs or infirmity, or other reaſonable cauſe to be allowed by the juſtices, to attend in perſon, they may grant the licence, on two ſureties entring into ſuch recognizance in 10*l.* each. 5 & 6 *Ed.* 6. *c.* 25. *ſ.* 1. 26 *G.* 2. *c.* 31. *ſ.* 1.

As by their diſcretion ſhall be thought neceſſary and convenient] Mr. *Dalton* obſerves upon theſe words in the ſtatute of 5 & 6 *Ed.* 6. that the matter of the condition of the recognizance is by the ſtatute partly referred to the *diſcretion of the juſtices*. And he ſays, in ſome ſhires the juſtices have agreed upon certain articles framed by their diſcretion, and generally to be propounded to all common ale ſellers, taking their bond for performance of the ſame; a copy whereof they uſed to deliver to every of them; which manner (he ſays) had been allowed.

And amongſt articles of this kind, he recommends to the juſtices care theſe three eſpecially. 1. That no alehouſekeeper, upon the lord's day, ſhould receive or ſuffer to remain any perſons whatſoever, as their gueſts, in any their houſes or other places, to tipple, eat, or drink; other than travellers, and ſuch as come upon neceſſary buſineſs. 2. That they ſuffer no perſon whatſoever, reſorting to their houſes only to eat or drink, to remain there after nine of the clock in the evening in winter, and ten in ſummer. 3. That they ſuffer no perſon, reſorting to their houſes only

only to eat and drink, to remain tipling there above one hour, other than travellers. *Dalt. c.* 176.

2. Which ſaid recognizance, with the condition thereof, fairly written or printed, ſhall forthwith, or at the next ſeſſions at fartheſt, be ſent or returned to the clerk of the peace, under the hands of the juſtices, to be by him entred or filed amongſt the records. 26 *G.* 2. *c.* 31. *ſ.* 1. To be filed at the ſeſſions.

3. And for every licence granted, without taking ſuch recognizance; and for every ſuch recognizance taken, and not ſent or returned; every juſtice ſigning ſuch licence, ſhall forfeit 3 *l.* 6 *s.* 8 *d.* 5 & 6 *Ed.* 6. *c.* 25. *ſ.* 2. 26 *G.* 2. *c.* 31. *ſ.* 1. Penalty for licenſing otherwiſe.

Which ſaid forfeiture, for granting licences without taking recognizances, ſhall be to him who ſhall ſue, together with coſts. 26 *G.* 2. *c.* 31. *ſ.* 6. But it is not ſaid who ſhall have the penalty for not returning the recognizance to the clerk of the peace, therefore that ſhall go to the king.

4. And the clerk of the peace ſhall keep a regiſter or calendar of all ſuch recognizances, and ſhall deliver to the juſtices, at the meeting for granting licences, a true copy of ſuch regiſter or calendar. 26 *G.* 2. *c.* 31. *ſ.* 5. Recognizances to be calendred.

5. And for every recognizance ſhall be paid by the clerks of the juſtices taking ſuch recognizances, to the clerk of the peace for filing or recording the ſame, and for making and delivering the copies of the regiſter or calendar 1 *s.* which ſhall be paid to the clerks of the ſaid juſtices, by the perſons licenſed, over and above the fees payable to the ſaid juſtices clerks. 26 *G.* 2. *c.* 31. *ſ.* 5. Fee for the recognizance.

6. By the 5 & 6 *Ed.* 6. *c.* 25. *ſ.* 3. The juſtices ſhall have power, in their quarter ſeſſions, by preſentment, information, or otherwiſe by their diſcretion, to enquire of all ſuch perſons as ſhall be admitted and allowed to keep any alehouſe or tipling houſe, and that be ſo bound by recognizance, if they have done any act whereby they have forfeited the ſame recognizance; and they ſhall upon ſuch preſentment or information award proceſs againſt every ſuch perſon ſo preſented or complained upon before them, to ſhew why he ſhould not forfeit his recognizance; and ſhall have power to hear and determine the ſame, by all ſuch ways and means, as by their diſcretion ſhall be thought good. Proceſs on the recognizance.

And by the 26 *G.* 2. *c.* 31. Any juſtice on complaint or information that ſuch licenſed perſon hath committed any act, whereby in the judgment of ſuch juſtice the recognizance may be forfeited, or the condition broken, may by ſummons under hand and ſeal require ſuch perſon to appear at the general or quarter ſeſſions, then and there to anſwer to the matter of ſuch complaint or information; and alſo may bind the complainant, or any other perſon, in a recognizance to appear and give evidence; and the ſeſſions may direct the jury which ſhall there attend for the trial of traverſes, or ſome other jury of twelve honeſt and ſubſtantial men, to be then and there impanelled by the ſheriff without fee, to inquire thereof; and if the jury find that ſuch perſon hath done any act whereby the recognizance is broken, ſuch act being ſpecified in ſuch complaint or information, the court may adjudge him guilty; which verdict and adjudication ſhall be final; and thereupon the

court ſhall order the recognizance to be eſtreated into the exchequer, to be levied to his majeſty's uſe; and the ſaid perſon ſhall be diſabled to ſell any ale, beer, cyder, perry, or ſpirituous liquors for three years, and any licence granted to him for ſuch term ſhall be void. *ſ.* 7. Provided that the juſtices, at the requeſt of the proſecutor, or of the party complained of, or either of his ſureties, may adjourn the trial to the then next ſeſſions. *ſ.* 8.

And if any perſon ſhall be diſabled, by conviction, to ſell ale, beer, cyder, or perry; he ſhall by the ſame conviction be diſabled to ſell any ſpirituous liquors, any licence before obtained for that purpoſe notwithſtanding; and every licence granted to him for ſelling ale, beer, cyder, perry, or ſpirituous liquors, ſhall be void; and if he ſhall ſell during ſuch diſability, he ſhall be puniſhed as for ſelling without licence (I); and a certificate from the clerk of the peace (which he ſhall grant without fee) of ſuch conviction ſhall be legal evidence. *id. ſ.* 11.

V. To what places the licence ſhall extend.

Licence reſtrained to the place.

1. No licence ſhall intitle any perſon to keep an alehouſe in any other place, than that in which it was firſt kept by virtue of ſuch licence; and ſuch licence with regard to all other places ſhall be void. 26 *G.* 2. *c.* 31. *ſ.* 3.

Perſon dying or removing.

2. And if any licenſed perſon ſhall die, or remove from an alehouſe, the perſon ſucceeding to ſuch houſe may keep on the ſame during the reſidue of the term; on condition, that within thirty days after ſuch death or removal, ſuch perſon obtain ſuch certificate as aforeſaid, to be ſigned by ſome neighbouring juſtice, in order to its being produced at the next general meeting in *September*; and if ſuch certificate be not ſo obtained, and ſigned, within the ſaid thirty days, then immediately from the expiration thereof ſuch licence ſhall be void. *id.*

VI. How long the licence ſhall continue in force.

For how long the licence ſhall be.

Such licence ſhall be made for one year only, to commence on *Sep.* 29. 26 *G.* 2. *c.* 31. *ſ.* 4.

And hereupon ariſeth an inconvenience, in caſe of the removal or change of tenants, which in moſt places is not at *Michaelmas*, when the licence taketh effect, but in the ſummer ſeaſon, to wit, either at old *May-day* or *Whitſuntide*, which prudent antiquity hath eſtabliſhed, as the more convenient, in regard of health, for the changing of habitations; in which caſes, the perſon removing loſeth the benefit of his licence for almoſt half the year, and cannot continue his buſineſs, unleſs he removeth alſo into a houſe already licenſed (and this indeed may ſtand with good reaſon, for perhaps he may remove into a houſe not fit to be licenſed;) but then the perſon coming into his place in the houſe from whence he did remove, may (if ſo be he can only procure a certificate) continue the buſineſs until the end of the year, without any reſtraint of a recognizance, which matter ſeemeth to require ſome conſideration.

VII. Offences

VII. Offences in brewing of ale.

1. By the 1 *W. Seſſ.* 1. *c.* 24. *ſ.* 17. No common brewer or retailer of beer or ale, ſhall uſe in the brewing or working thereof, any melaſſes, coarſe ſugar, honey, or compoſition or extract of ſugar; on pain of forfeiting the liquor, and alſo 100 *l.* half to the king, and half to him that ſhall ſue in ſix months. Undue mixtures in making of ale.

2. And by the 10 & 11 *W. c.* 21. *ſ.* 34. If any common brewer or retailer of beer or ale, ſhall uſe any melaſſes, coarſe ſugar, honey, or compoſition or extract of ſugar, in the brewing, making, or working of any ale or beer; or if any common brewer ſhall receive into his cuſtody any quantity of any the ſaid materials exceeding ten pounds, he ſhall forfeit 100 *l.* to be recovered and mitigated as by the laws of exciſe; and the ſervant or other aſſiſting therein, ſhall forfeit 20 *l.* in like manner, and in default of payment ſhall be impriſoned three months. The ſame.

3. And by 9 *Ann. c.* 12. No common brewer, innkeeper, or victualler, ſhall uſe any broom, wormwood, or any other bitter ingredient (to ſerve inſtead of hops) in any beer or ale for ſale, (except infuſing the ſame, after it is brewed and tunned, to make broom or wormwood ale or beer;) on pain of 20 *l.* half to the king, and half to the proſecutor, to be levied as by the laws of exciſe. *ſ.* 24, 26. The ſame.

4. And by 12 *Ann. ſtat.* 1. *c.* 2. No common brewer, or retailer of beer or ale, ſhall uſe any ſugar, honey, foreign grains, *Guinea* pepper, *eſſentia bine*, *coculus indiae*, or any unwholſome ingredients in the brewing of beer or ale, or mix any of them therewith, on pain of 20 *l.* to be recovered and mitigated as by the laws of exciſe, half to the king, and half to him that ſhall ſue. *ſ.* 32. The ſame.

VIII. Innkeepers obliged to receive gueſts.

If one who keeps a common inn, refuſe either to receive a traveller as a gueſt into his houſe, or to find him victuals or lodging, upon his tendring him a reaſonable price for the ſame; he is not only liable to render damages for the injury, in an action on the caſe at the ſuit of the party grieved, but may alſo be indicted and fined at the ſuit of the king. 1 *Hawk.* 225. Innkeeper obliged to receive gueſts.

Alſo it is ſaid, that he may be compelled by the conſtable of the town, or by a juſtice of the peace, to receive and entertain ſuch a perſon as his gueſt; and that it is no way material whether he have a ſign before his door or not, if he make it his common buſineſs to entertain paſſengers. But how the officer may compel him may be a queſtion: It ſeemeth that all the officer can do, is either to cauſe ſuch alehouſekeeper to be ſuppreſſed, or elſe to preſent ſuch offence at the aſſizes or ſeſſions, that ſo ſuch offender may be thereupon indicted. *Dalt. c.* 7.

IX. *Soldiers quartered in alehouſes.*

Soldiers quartered in inns.

By the yearly acts againſt mutiny and deſertion, the conſtable, and in his default, a juſtice of the peace, may quarter ſoldiers in inns, livery ſtables, alehouſes, and victualling houſes; as is ſet forth more at large in title **Soldiers**.

X. *Concerning ale veſſels, and the meaſure of ale.*

Juſtices to rate the price of veſſels.

1. The juſtices in *Eaſter* ſeſſions yearly (and mayors in corporations) ſhall rate the price of all barrels, kilderkins, firkins, and other veſſels to be ſold for ale or beer to be uttered therein: And if any cooper ſhall not ſell the ſame according to ſuch rate, he ſhall forfeit 3*s.* 4*d.* half to the king, and half to him that ſhall ſue. 8 *El. c.* 9.

Barrel, what.

2. Every barrel of beer, within the bills of mortality, ſhall be 36 gallons, and the barrel of ale 32 gallons; and in all other places, 34 gallons ſhall be reckoned for a barrel of beer or ale. 12 *C.* 2. *c.* 24. *ſ.* 34. 1 *W. ſt.* 1. *c.* 24. *ſ.* 5.

Quarts and pints to be marked.

3. By 11 & 12 *W. c.* 15. which is required to be given in charge at the ſeſſions to the grand jury, it is enacted, that all innkeepers, alehouſekeepers, ſutlers, victuallers and other retailers of ale or beer, and every perſon keeping any publick houſe, and retailing and ſelling ale or beer, ſhall retail and ſell the ſame in and from their houſes, by a full ale quart or ale pint, according to the ſtandard of the exchequer, in a veſſel made of wood, earth, glaſs, horn, leather, pewter, or of ſome other good and wholeſome metal, made and ſized to the ſtandard, and ſigned, ſtamped, or marked to be of the content of the ſaid ale quart or ale pint, according to the ſaid ſtandard, either from the exchequer, or from ſome city, town corporate, borough, or market town, where a ſtandard ale quart or pint, made from the ſaid ſtandard, ſhall be kept for that purpoſe; and ſhall not retale and utter any ale or beer, in any other veſſel not ſigned and marked; on pain of forfeiting not above 40*s.* nor under 10*s.* for every offence, half to the poor, and half to him that ſhall proſecute or ſue for the ſame, to be recovered before one juſtice, by the oath of one witneſs, and to be levied by warrant of diſtreſs, rendring the overplus, deducting thereout the reaſonable charges. *ſ.* 1, 6. (K). The proſecution to be within thirty days. *ſ.* 6.

And moreover he ſhall not detain any goods for the reckoning, but ſhall be left to his action at law. *ſ.* 2.

But it is not neceſſary that beer or ale ſold to be ſpent out of the houſe, be carried away in ſtandard meaſures; but it is ſufficient if it be meaſured out by the ſtandard. *ſ.* 7.

Who ſhall mark them.

4. And every mayor or chief officer of every city, town corporate, borough, or market town, ſhall on requeſt to him made, cauſe all ale quarts and ale pints, made of wood, earth, glaſs, horn, leather, pewter, or other good and wholſome metal, which ſhall be brought to him, to be meaſured and ſized with the ſtandard in his cuſtody, and ſhall then cauſe the ſame, and every of them,

them, to be plainly and apparently ſigned, ſtamped, and marked with W R and a crown, for which they ſhall not receive above one farthing for each meaſure; on pain of 5 *l.* to be recovered as aforeſaid, and he ſhall alſo pay to the party grieved treble damages, with coſts, by action at law. 11 & 12 *W.* *c.* 15. *ſ.* 5.

Note, Moſt of the books do ſet forth that the ſub-commiſſioners or collectors of exciſe ſhall procure ſtandard quarts and pints out of the exchequer, for every market town; but this was only required of them before *June* 24. 1700, and not ſince. *ſ.* 3.

5. An indictment will lie for ſelling ale in pots unſealed, altho' the ſtatute appoints another method of proceeding; becauſe meaſures are by the common law, and the ſtatutes only direct the manner of aſcertaining them. *Black.* 10. Indictment.

But in ſuch caſe, the indictment muſt not be upon the ſtatute, but at the common law; and the offence ought to be laid, not for ſelling in pots unſealed, but in pots wanting meaſure.

XI. Conſpiring to enhance the price of ale.

If any brewers ſhall conſpire to ſell their victuals but at certain prices; they ſhall, on conviction in the ſeſſions or leet, by witneſs, confeſſion, or otherwiſe, forfeit 10 *l.* to the king for the firſt offence, and if not paid in ſix days, they ſhall be impriſoned 20 days; for the ſecond offence, 20 *l.* in like manner, or the pillory; for the third offence, 40 *l.* in like manner, or the pillory, loſs of an ear, and to become infamous. 2 & 3 *Ed.* 6. *c.* 15. Conſpiring to raiſe the price.

XII. Selling in veſſels of plate.

By 7 & 8 *W.* *c.* 19. intitled, An act to encourage the bringing plate into the mint to be coined, and for the further remedying the ill ſtate of the coin of the kingdom; it is enacted, that from and after *May* 4. 1696. no perſon keeping any inn, tavern, alehouſe, or victualling houſe, or ſelling wine, ale, beer, or any other liquors by retale, ſhall publickly uſe, or expoſe to be uſed in his houſe, any wrought or manufactured plate whatſoever, or any utenſil or veſſel thereof (except ſpoons) under the penalty of forfeiting the ſame, or the value thereof with coſts, to him who ſhall ſue. Selling in plate.

I have recited the title of the act, that the whole may appear together; becauſe, as the general practice ſeemeth now to be allowed to the contrary, perhaps it may be thought that this clauſe is obſolete, as having been intended only to encourage the coinage at that time, when there was great ſcarcity of money: But how far this may be urged on an action brought, I preſume not to ſay.

XIII. Innkeeper ſuffering tipling.

If any innkeeper, victualler, or alehouſekeeper, or tavern keeper, keeping an inn or victualling houſe, do ſuffer any perſon to continue drinking or tipling therein (except ſuch as ſhall be invited by any traveller, and ſhall accompany him only during his neceſſary Penalty of ſuffering tipling.

neceſſary abode there; and except labouring and handicraftſmen in cities, towns corporate, and market towns, upon the uſual working days, for one hour at dinner time, to take their diet in an alehouſe; and except labourers and workmen, which for the following of their work by the day or by the great, in any city, town corporate, market town or village, ſhall for the time of their ſaid continuing in work there, ſojourn, lodge or victual in any inn, alehouſe or other victualling houſe; and except for urgent and neceſſary occaſions to be allowed by two juſtices;) he ſhall, on conviction thereof before the mayor, or a juſtice of the peace, on view, or confeſſion, or oath of one witneſs, forfeit 10*s.* to the poor. 1 *J.* *c.* 9. *ſ.* 2. 1 *C.* *c.* 4. 21 *J.* *c.* 7.

The ſame to be levied by the conſtables or churchwardens by way of diſtreſs (L); and for default of ſatisfaction in ſix days, the diſtreſs to be appriſed and ſold, rendring the overplus; and for want of ſufficient diſtreſs, the party offending to be by ſuch mayor or juſtice committed (M) to the common gaol, there to remain until the penalty be truly paid. 1 *J.* *c.* 9. *ſ.* 3.

And if the conſtables or churchwardens do neglect their duty in levying, or do not levy the penalties; or in default of diſtreſs, do neglect to certify the default, by the ſpace of 20 days, to ſuch mayor or juſtice, every perſon ſo offending ſhall forfeit 40*s.* to the poor, to be levied by way of diſtreſs by warrant from ſuch mayor or juſtice; the diſtreſs to be detained ſix days; in which time if payment be not made, the goods to be appraiſed and ſold, returning the overplus; for want of ſufficient diſtreſs, the conſtable or churchwarden ſo offending, to be by ſuch mayor or juſtice committed to the common gaol, there to remain until the penalty be truly paid. 1 *J.* *c.* 9. *ſ.* 4.

And moreover ſuch alehouſekeeper ſhall be diſabled, for the ſpace of three years, to keep any ſuch alehouſe. 21 *J.* *c.* 7.

And alſo, the ſaid offence may be inquired of and preſented before juſtices of aſſize, juſtices of the peace in their ſeſſions, mayors in corporations, and in the leet; and thereupon ſuch due proceeding ſhall be had for the conviction, as in ſuch like caſes upon any indictment or preſentment is uſed. 4 *J.* *c.* 5. *ſ.* 5.

And all conſtables, churchwardens, aleconners and ſidemen, ſhall in their ſeveral oaths incident to their offices, be charged to preſent the ſaid offence. 4 *J.* *c.* 5. *ſ.* 7.

XIV. Perſons guilty of tipling.

Penalty of tipling.

1. If any perſon (unleſs thoſe excepted under the foregoing head, by 1 *J.* *c.* 9.) ſhall continue drinking or tipling, in any inn, victualling houſe, or alehouſe, or any tavern keeping an inn or victualling houſe; he ſhall, on conviction thereof before the mayor or a juſtice of the peace, on view, confeſſion, or oath of one witneſs, forfeit for every offence 3*s.* 4*d.* to be paid within one week next after the conviction, to the churchwardens (N), who ſhall be accountable for the ſame to the uſe of the poor: And if he ſhall refuſe or neglect to pay the ſame, it ſhall be levied by diſtreſs (O): And if he be not able to pay the forfeiture, then the mayor, juſtice, or court where

where the conviction ſhalt be, may puniſh the offender, by ſetting him in the ſtocks (P) for every offence by the ſpace of four hours. 4 *J.* *c.* 5. *ſ.* 4. 1 *J.* *c.* 9. 21 *J.* *c.* 7. 1 *C.* *c.* 4.

The ſaid offence may alſo be inquired of and preſented, before juſtices of aſſize, juſtices of the peace in ſeſſions, mayors, and in the leet; and proceeding ſhall be had thereupon for the conviction, as upon indictment or preſentment. 4 *J.* *c.* 5. *ſ.* 5.

The offender to be preſented, indicted, or convicted in ſix months. 4 *J.* *c.* 5. *ſ.* 11.

And all conſtables, churchwardens, aleconners, and ſidemen, ſhall in their ſeveral oaths incident to their offices, be charged to preſent the ſaid offence. 21 *J.* *c.* 7. *ſ.* 5.

2. And if any alehouſekeeper ſhall be convicted of the ſaid offence, he ſhall moreover for the ſpace of three years be diſabled to keep any ſuch alehouſe. 7 *J.* *c.* 10. 21 *J.* *c.* 7. Alehouſekeeper guilty of tipling.

XV. Concerning drunkenneſs.

1. Drunkenneſs excuſeth no crime; but he who is guilty of any crime whatever, thro' his voluntary drunkenneſs, ſhall be puniſhed for it as much as if he had been ſober. 1 *Haw.* 2. Drunkenneſs no excuſe.

2. If any offend their brethren by drunkenneſs, the churchwardens and ſidemen ſhall preſent the ſame to the ordinary, that they may be puniſhed by the ſeverity of the laws, according to their deſerts; and ſuch notorious offenders ſhall not be admitted to the holy communion, till they be reformed. *Can.* 109. Spiritual cenſure.

And all conſtables, churchwardens, aleconners, and ſidemen, ſhall be ſworn to preſent the offence of drunkenneſs. 4. *J.* *c.* 5. *ſ.* 7.

3. Every perſon who ſhall be drunk, and thereof ſhall be convicted before one juſtice, or mayor, on view, confeſſion, or oath of one witneſs, ſhall forfeit for the firſt offence 5 *s.* to be paid within one week after conviction, to the churchwardens (Q) who ſhall be accountable for the ſame to the uſe of the poor; and if he ſhall refuſe or neglect to pay the ſame as aforeſaid, it ſhall be levied by diſtreſs (R); and if the offender be not able to pay the ſaid ſum of 5 *s.* he ſhall be committed to the ſtocks (S), there to remain by the ſpace of ſix hours. 4 *J.* *c.* 5. *ſ.* 2. 21 *J.* *c.* 7. *ſ.* 1, 3. Penalty for the firſt offence.

And if any conſtable, or other inferior officer to whom that ſhall be given in charge by the precept of any mayor or juſtice, do neglect the due correction of the offender, or the due levying of the penalties where diſtreſs may be had; every perſon ſo offending ſhall forfeit 10 *s.* to be levied by diſtreſs, by any other perſon having warrant from any mayor, juſtice or court, where any ſuch conviction ſhall be, to be paid to the churchwardens, who ſhall account for the ſame to the uſe of the poor where the offence ſhall be committed. 4 *J.* *c.* 5. *ſ.* 3.

4. And if any perſon once convicted of drunkenneſs, ſhall after that be again convicted of the like offence, he ſhall be bounden with two ſureties in a recognizance of 10 *l.* with condition to be from thenceforth of good behaviour. 4 *J.* *c.* 5. *ſ.* 6. 21 *J.* *c.* 7. *ſ.* 3. Second offence.

To

To be of good behaviour] Lord *Hale*, ſpeaking of the ſtatute of 34 *Ed.* 3. *c.* 1. which gave juſtices power to bind malefactors to the good behaviour, generally, without any time limited, ſays, that it is not meant that the ſame ſhall be perpetual, but in the nature of bail, *viz.* to appear at ſuch a day at their ſeſſions, and in the mean time to be of good behaviour. 2 *H. H.* 136.

Who may inquire thereof.

5. The ſaid offence may alſo be inquired of and preſented before juſtices of aſſize, juſtices of the peace in their ſeſſions, mayors, and in the leet; and thereupon proceſs ſhall be had for the conviction, as upon indictment or preſentment. 4 *J.* *c.* 5. *ſ.* 5.

In what time.

6. But the offender ſhall be preſented, indicted or convicted in ſix months. 4 *J.* *c.* 5. *ſ.* 11.

None to be twice puniſhed for the ſame offence.

7. It is alſo provided, that this act ſhall not abridge the eccleſiaſtical juriſdiction. 4 *J.* *c.* 5 *ſ.* 8.

But when the offender hath been once puniſhed, by any the ways before mentioned, he ſhall not be puniſhed again by any other way or means. *ſ.* 9.

Alehouſekeeper drunk.

8. If any alehouſekeeper ſhall be convicted of being drunk; he ſhall, beſides the penalties abovementioned, be utterly diſabled to keep any ſuch alehouſe, for the ſpace of three years next enſuing the conviction. 7 *J.* *c.* 10. 1 *C.* *c.* 4

Navy.

9. Every perſon in his majeſty's pay in the navy, being guilty of drunkenneſs, ſhall incur ſuch puniſhment as a court martial ſhall think fit to impoſe. 22 *G.* 2. *c.* 33. *Art.* 2.

XVI. Detaining goods for the reckoning.

May detain goods.

1. Since innkeepers are bound by the law to receive gueſts, for that reaſon they may detain their goods till they are paid. 1 *Salk.* 388.

Gueſt, who.

2. *Holt* C. J. doubted whether a man is a gueſt by ſetting up his horſe at an inn, tho' he never went into the inn himſelf; but the other three juſtices held, that ſuch perſon is a gueſt by leaving his horſe, as much as if he had ſtaid himſelf, becauſe the horſe muſt be fed, by which the innkeeper has gain; otherwiſe if he had left a trunk, or a dead thing. 1 *Salk.* 388.

Cannot ſeize after the goods are gone.

3. By the cuſtom of the realm, if a man lies in an inn one night, the innkeeper may detain his horſes, until he is paid for the expences; but if he gives the party credit for that time, and lets him depart without payment, then he hath waved the benefit of the cuſtom, and muſt rely on his other agreement. *T.* 9 *G.* *Mod. C. in L. & E.* 172.

Reckoning in particulars; and veſſels to be ſealed.

4. Alſo, if any innkeeper, alehouſekeeper, victualler, or ſutler, in giving any account or reckoning in writing, or otherwiſe, ſhall refuſe or deny to give in the particular number of quarts or pints, or ſhall ſell in meaſures unmarked; it ſhall not be lawful for him, for default of payment of ſuch reckoning, to detain any goods or other thing, belonging to the perſon or perſons from whom ſuch reckoning ſhall be due, but he ſhall be left to his action at law for the ſame, any cuſtom or uſage to the contrary notwithſtanding. 11 & 12 *W.* *c.* 15. *ſ.* 2.

5. It

5. It is ſaid, that if a perſon brings his horſe to an inn, and leaves him in the ſtable there, the innkeeper may keep him till the owner pay for the keeping; and if he eat out as much as he is worth, the maſter of the inn, after a reaſonable appraiſement, may ſell the horſe and pay himſelf. *Yelv.* 66. Whether a horſe may be ſold for his keeping.

But that if one bring ſeveral horſes to an inn, and afterwards takes them all away but one, the innkeeper may not ſell this horſe for payment of the debt of the others, but every horſe is to be ſold to ſatisfy what is due for his own meat. 1 *Bulſt.* 207.

But in the caſe of *Jones* and *Pearle*, *E.* 9 *G.* In trover for three horſes, the defendant pleaded that he kept a public inn at *Glaſtenbury*, and that the plaintiff was a carrier, and uſed to ſet up his horſes there, and 36 *l.* being due to him for keeping the horſes, which was more than they were worth, he detained and ſold them, as well he might: But on demurrer, judgment was given for the plaintiff, an innkeeper having no power to ſell horſes, except within the city of *London*. And beſides, when the horſes had been once out, the power of detaining them for what was due before, did not ſubſiſt at their coming in again. *Str.* 557.

XVII. Goods of a gueſt ſtolen out of an inn.

1. Inns were allowed for the benefit of travellers, who have certain privileges whilſt they are in their journies, and are in a more peculiar manner protected by the law; it is for this reaſon, that the innkeeper ſhall anſwer for thoſe things which are ſtolen within the inn, tho' not delivered to him to keep, and tho' he was not acquainted that the gueſts brought the goods to the inn; for it ſhall be intended to be thro' his negligence, or occaſioned by the fault of him or his ſervants. 8 *Co.* *Caley*'s caſe. Innkeeper anſwerable for goods ſtolen.

2. So if he puts a horſe to paſture, without the direction of his gueſt, and the horſe is ſtolen, he muſt make ſatisfaction. (But otherwiſe, if with his direction.) 8 *Co.* *Caley*'s caſe. Horſe ſtolen out of a paſture.

3. But an innkeeper ſhall not be liable to make any ſatisfaction for a theft or burglary committed in his inn, and in the chamber of any of his gueſts *hired for ſome time*; but if the gueſt leaves goods in his chamber, and returns again *the ſame night*, the innkeeper ſhall be liable for ſuch goods ſtolen. *Cro. Ja.* 188. Difference between a gueſt and a lodger.

4. Alſo, if an innkeeper bids his gueſt take the key of his chamber and lock the door, and that he will not take the charge of the goods; yet if they are ſtolen, he ſhall be anſwerable; becauſe he is charged by law for all things which come to his inn, and he cannot diſcharge himſelf by ſuch or the like words. *Dalt.* c. 56. *Black.* 169. Innkeeper ſhall not diſcharge himſelf by refuſing to be anſwerable.

XVIII. Gueſts ſtealing goods.

A gueſt in a common inn, ariſing in the night time, and carrying goods out of his chamber into another room, and from thence to the ſtable, intending to ride away with them, is guilty of felony, Gueſt ſtealing goods.

lony, altho' there was no treſpaſs in the taking of them (which yet is generally required in caſes of felony). *Dalt. c.* 40.

Note, The univerſities are generally excepted out of theſe acts concerning alehouſes.

A. Warrant for ſelling ale without licence, on 26 *G.* 2. *c.* 31.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

WHEREAS A. I. *of* ——— *in the ſaid county, yeoman, hath this day made information upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. O. *of* ——— *yeoman,* [or, *Whereas* A. I. *of* ——— *yeoman, hath this day made information, and ſhewed probable cauſe before me that he ſuſpecteth that* A. O. *&c.*] *doth upon his own authority, not being thereunto lawfully licenſed, keep a common alehouſe at* ——— *aforeſaid, contrary to the laws in that caſe made and provided; and that* A. W. *of* ——— *yeoman, and* B. W. *of* ——— *yeoman, are material witneſſes to be examined concerning the premiſſes: You are therefore hereby required forthwith to ſummon the ſaid* A. O. *to appear before me to anſwer the premiſſes, and to be dealt withal according to law; and you are likewiſe to ſummon the ſaid* A. W. *and* B. W. *to appear before me at the ſame time, to teſtify their knowledge concerning the ſame. And with them do you appear at the ſame time, to certify what you ſhall have done in the premiſſes. Herein fail you not. Given under my hand and ſeal the* ——— *day of* ———.

B. Conviction for ſelling ale without licence, on the 26 *G.* 2. *c.* 31.

By the words of the ſtatute, the conviction ſhall be in this form, or to this effect:

Middleſex. A. O. *is convicted on his own confeſſion* (or, *on the oath of* ———) *of having ſold ale, beer, or other liquors, in the pariſh of* ——— *in this county, on the* ——— *day of* ——— *without being licenſed thereto according to law: This is the firſt, ſecond, or third conviction. Given under my hand and ſeal this* ——— *day of* ———.

And this conviction ſhall be certified to the next ſeſſions, to be filed amongſt the records.

C. Warrant

C. Warrant to levy the forfeiture on conviction for ſelling ale without licence, on 26 G. 2. c. 31.

Weſtmorland. { To the conſtable of ———.

WHEREAS A. O. *of* ——— *yeoman, was this day lawfully convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, for keeping of a common alehouſe in the pariſh of* ——— *in the ſaid county, not being thereunto lawfully licenſed, according to the ſtatutes in that caſe made and provided, by reaſon whereof he hath forfeited the ſum of* 40s. *to be diſtributed as is herein after mentioned: Theſe are therefore to require you, that you do levy the ſaid forfeiture by diſtraining the goods and chattels of him the ſaid* A. O. *And if in* [*four*] *days time from your taking the ſaid diſtreſs, the ſaid forfeiture, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by the ſale thereof pay one moiety of the ſaid forfeiture to* A. I. *of* ——— *yeoman, who informed me of the ſaid offence, and the other moiety to the overſeers of the poor of the pariſh aforeſaid, to be by them applied to the uſe of the poor of the ſaid pariſh; rendring to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if no ſufficient diſtreſs ſhall be found whereon to levy the ſaid ſum of* 40s. *that then you certify the ſame to me, together with the return of this precept. Hereof fail not. Given under my hand and ſeal the* ——— *day of* ———.

D. Commitment for want of diſtreſs for ſelling ale without licence, on 26 G. 2. c. 31.

Weſtmorland. { To the keeper of the houſe of correction [*or*, common gaol] at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *yeoman, was on the* ——— *day of* ——— *duly convicted before me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, of having upon his own authority, and not being thereunto lawfully licenſed, taken upon him to keep a common alehouſe or tipling houſe at* ——— *aforeſaid in the county aforeſaid, and there uſed commonly ſelling of ale, againſt the form of the ſtatutes in ſuch caſe made and provided, whereby the ſaid* A. O. *hath for his ſaid offence forfeited the ſum of* 40s. *And whereas on the* ——— *day of* ——— *I did iſſue my warrant to the conſtable of* ——— *aforeſaid, to levy the ſaid penalty by diſtreſs and ſale of the goods and chattels of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſtatute in that behalf made; and whereas it duly appears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the*

goods and chattels of the ſaid A. O. *as aforeſaid, but that no ſufficient diſtreſs can be found whereon to levy the ſame; Theſe are therefore to command you to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, there to remain for the ſpace of one month from the date hereof. Given under my hand and ſeal, the* ——— *day of* ———.

The like will do for the ſecond and third offence, *mutatis mutandis*; and recite, "And whereas the ſaid *A. O.* hath been once, "at another time, convicted before me of the like offence, and "hath now offended the ſecond time." Or, "And whereas the "ſaid *A. O.* hath been twice heretofore lawfully convicted of the "like offence, and hath now offended the third time, *&c.*"

E. F. Precept to the high conſtable to iſſue warrants to the petty conſtables, to ſummon alehouſekeepers to be licenſed; on 5 & 6 *Ed.* 6. *c.* 25. 2 *G.* 2. *c.* 28. and 26 *G.* 2. *c.* 31.

Weſtmorland. { To *John Bowneſs*, gentleman, high conſtable of the *Eaſt Ward* within the ſaid county.

IN *purſuance of the ſtatutes in that caſe made, theſe are to require you, on ſight hereof, to iſſue out your warrants to all petty conſtables belonging to the ſeveral conſtablewicks within your ſaid ward, in the form, or to the effect hereafter following. Given under our hands and ſeals the* ——— *day of* ———.

J. P.
K. P.

The form of the warrant as above directed:

Weſtmorland, Eaſt Ward. { To the conſtables of ———.

BY *virtue of a warrant from his majeſty's juſtices of the peace acting within the ſaid ward, to me directed, you are hereby required to give notice to all licenſed innkeepers and alehouſekeepers, and licenſed brandy ſellers or other retailers of diſtilled liquors to be drank in their houſes, within your conſtablewick, and alſo to all perſons unlicenſed (ſo far as the ſame ſhall come to your knowledge) who do intend to offer themſelves to be licenſed at the next general meeting of the ſaid juſtices for that purpoſe, that they do perſonally appear before the ſaid juſtices at* ——— *on the* ——— *day of* September *next, at the hour of* ——— *in the forenoon of the ſame day, to take or renew their licences for the year enſuing; and alſo to give them notice, that every perſon then and there to be licenſed, muſt perſonally enter into a recognizance in the ſum of* 10l. *together with two ſureties in* 5l. *each, or one ſurety in* 10l. *that they will not uſe or ſuffer any unlawful games, and that they will keep good order and rule within their reſpective houſes and other places;*

and

and if any ſhall be hindred by ſickneſs, or other reaſonable cauſe to be allowed by the ſaid juſtices, that he muſt procure two ſureties then and there to be bound in like manner in 10l. *each.*

And unto ſuch perſons as have not been licenſed for the year preceding, you are further to give notice, that no licence will be granted to any of them, unleſs he ſhall alſo, at the ſame time and place, produce a certificate under the hands of the miniſter and the major part of the churchwardens and overſeers, or elſe of three or four reputable and ſubſtantial houſeholders of the place where he inhabiteth, ſetting forth that he is of good fame, and of ſober life and converſation.

And you are to make a return to the ſaid juſtices, at the ſame time and place, in writing under your hand, containing the names of all ſuch perſons as you ſhall have ſummoned ſo to appear before them as is aforeſaid, together with their dwelling places, and the ſigns by which their houſes are known.

Hereof fail not. Given under my hand at Raiſbeck *in the ſaid county the* ——— *day of* ——— *in the year of our lord* ———.

John Bowneſs, *high conſtable.*

G. Licence to keep an alehouſe, on the 5 & 6 *Ed.* 6. *c.* 25. 2 G. 2. *c.* 28. and 26 G. 2. *c.* 31.

Weſtmorland, Eaſt Ward. AT *a general meeting of his majeſty's juſtices of the peace for the ſaid county, acting within the diviſion of the* Eaſt Ward *aforeſaid in the county aforeſaid, holden at* ——— *in and for the ſaid diviſion, for licenſing perſons to keep common inns and alehouſes the* ——— *day of* September *in the* ——— *year of the reign of our ſovereign lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, and in the year of our lord* ———.

We his majeſty's juſtices of the peace for the ſaid county, whoſe hands and ſeals are hereunto ſet (whereof one is of the quorum) *aſſembled at the ſaid general meeting, do allow and licenſe* A. B. *yeoman, at the ſign of* ——— *in* ——— *within the diviſion and county aforeſaid, to keep a common alehouſe, or victualling houſe, and to utter and ſell victuals, beer, ale, cyder, and other exciſeable liquors, to be drank in the ſame houſe wherein he now dwelleth, and not elſewhere, for one whole year from the* 29*th day of this preſent month of* September, *and no longer: So as the true aſſize in bread, beer, ale, and other liquors, hereby allowed to be ſold, be duly kept; and no unlawful game or games, drunkenneſs, or any other diſorder be ſuffered in his houſe, yard, garden, or backſide; but that good order and rule be maintained and kept therein, according to the laws of this realm in that behalf made. Given under our hands and ſeals, the day and year firſt above written.*

If he hath not been licenſed the year before, then theſe words muſt be inſerted,——*(A certificate under the hands of* ——— *having been firſt produced unto us, ſetting forth that the ſaid* ——— *is of good fame, and of ſober life and converſation.)*

H. Recognizance of an alehouſekeeper, on 5 & 6 *Ed.* 6. *c.* 25. and 26 *G.* 2. *c.* 31.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. P. *of* ——— *in the county aforeſaid, innkeeper, and* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, perſonally came before us* ——— *eſquires, juſtices of the peace for the ſaid county, and acknowledged themſelves to owe to our ſaid ſovereign lord the king, that is to ſay, the ſaid* A. P. *the ſum of* 10l. *and the ſaid* A. S. *and* B. S. *the ſum of* 5l. *each, of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands, and tenements reſpectively, to the uſe of our ſaid ſovereign lord the king, his heirs and ſucceſſors, if the ſaid* A. P. *ſhall make default in the condition underwritten.*

The condition of this recognizance is ſuch, that whereas the above-bounden A. P. *is licenſed to keep a common inn and alehouſe for one year from the* 29*th day of this preſent month of* September, *in the houſe where he now dwelleth at* ——— *aforeſaid; if he the ſaid* A. P. *ſhall keep and maintain good order and rule, and ſhall ſuffer no diſorders nor unlawful games to be uſed in his ſaid houſe, nor in any outhouſe, yard, garden, or backſide, thereunto belonging, during the ſaid term, then this recognizance ſhall be void.*

Taken and acknowledged the day and year abovewritten, before us

J. P.
K. P.

I. Conviction for ſelling after diſability, on the 26 *G.* 2. *c.* 31.

By the words of the ſtatute the ſaid conviction ſhall be in this form, or to this effect:

Middleſex. A. O. *is convicted on his own confeſſion* (or, *on the oath of* ———) *of having ſold ale, beer, or other liquors, in the pariſh of* ——— *in this county, on the* ——— *day of* ——— *after being diſabled to ſell the ſame. This is the firſt, ſecond, or third conviction. Given under my hand and ſeal this* ——— *day of* ———.

Which ſaid conviction ſhall be certified to the next ſeſſions, to be filed amongſt the records.

K. Warrant

K. Warrant to levy the penalty for ſelling ale in a veſſel not marked; on 11 & 12 *W.* *c.* 15.

Wermorland. { To the conſtable of ———.

WHEREAS A. O. *of* ——— *in the pariſh of* ——— *and county of* ——— *aforeſaid, alehouſekeeper, hath this day been duly convicted before me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, by the oath of* A. W. *a credible witneſs, of retailing, uttering, and ſelling beer, on the* ——— *day of* ——— *in his houſe at* ——— *aforeſaid, in a veſſel made of earth, which veſſel was not ſigned, ſtamped, or marked to be of the content of the full ale quart, or ale pint, according to the ſtandard thereof remaining in cuſtody of the chamberlains of his majeſty's exchequer, nor in proportion thereunto; whereby the ſaid* A. O. *hath forfeited a ſum not exceeding* 40 s. *nor leſs than* 10 s. *one half part thereof to the uſe of the poor of the pariſh of* ——— *aforeſaid, and the other half part to* A. I. *who proſecutes for the ſame: Now I do hereby adjudge the ſaid* A. O. *to have forfeited* 20 s. *for his ſaid offence; and I do hereby impower and require you, to levy the ſaid ſum of* 20 s. *upon the goods and chattels of the ſaid* A. O. *by diſtreſs and ſale thereof, rendring to the ſaid* A. O. *the overplus, if any be, deducting thereout reaſonable charges; and that you pay one half part of the ſaid forfeiture to the overſeers of the poor of the ſaid pariſh, for the uſe of the poor there, and the other half part to* A. I. *who proſecutes for the ſame as aforeſaid. Given under my hand and ſeal, the* ——— *day of* ———.

L. Warrant to levy the penalty for ſuffering tipling, on 1 *J.* *c.* 9.

Weſtmorland. { To the conſtable of ——— and to the churchwardens of the pariſh of ———.

WHEREAS *it hath been duly proved before me* ——— *this preſent day, That* A. O. *of* ——— *in pariſh of* ——— *in the ſaid county, alehouſekeeper, did upon the* ——— *day of* ——— *permit and ſuffer* A. D. *of* ——— *ſhoemaker, and* B. D. *of* ——— *labourer, to remain and continue drinking and tipling in the alehouſe of the ſaid* A. O. *in the pariſh aforeſaid, they having no urgent occaſion, nor other lawful reaſon ſo to do; Theſe are therefore to require you the ſaid conſtables and churchwardens, or ſome or one of you, to levy by diſtreſs of the goods and chattels of the ſaid* A. O. *the ſum of* 10 s. *for the ſaid offence, for the uſe of the poor of the ſaid pariſh, and to detain the ſaid goods for the ſpace of ſix days next after ſuch diſtreſs taken, if the ſaid forfeiture of* 10 s. *ſhall not be ſatisfied and paid to you within that time; and that after the ſaid ſix days, if the ſame ſhall not be ſo paid as aforeſaid, together with the reaſonable charges of taking, and keeping, the ſaid diſtreſs, that you do appraiſe and ſell the ſame to ſa-*

tisfy the ſaid forfeiture, rendring the ſurpluſage to the owner upon demand, reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if there ſhall not be ſufficient diſtreſs, whereby to levy the ſaid ſum of 10 s. *that you do certify the ſame to me, together with the return of this warrant. Given under my hand and ſeal, the ——— day of ———.*

M. Commitment for ſuffering tipling in default of diſtreſs; on 1 *J. c.* 9.

Weſtmorland. { To the conſtable of ——— and to the keeper of the common gaol at ——— in the ſaid county.

WHEREAS *on the ——— day of ——— it was duly proved before me ——— that* A. O. *of ——— in the pariſh of ——— in the ſaid county, alehouſekeeper, did upon the ——— day of ——— laſt paſt, ſuffer* A. D. *of ——— ſhoemaker, and* B. D. *of ——— labourer, to remain and continue drinking and tipling in the alehouſe of the ſaid* A. O. *at ——— aforeſaid, contrary to the ſtatute in that caſe made; and whereas on the ſaid ——— day of ——— I did by my warrant lawfully executed, require the conſtables and churchwardens of the ſaid pariſh of ——— or ſome of them, to levy the ſum of* 10 s. *of lawful money, upon the goods and chattels of the ſaid* A. O. *being forfeited by him, to the uſe of the poor of the ſaid pariſh, for the ſaid offence: And whereas it duly appears to me, as well on the teſtimony of* A. C. *conſtable of ——— aforeſaid, as otherwiſe, that he the ſaid* A. C. *hath uſed his beſt endeavours to levy the ſame as aforeſaid, but that the ſaid* A. O. *hath not ſufficient goods and chattels, upon which diſtreſs may be taken to ſatisfy the ſaid forfeiture: Theſe are therefore in his majeſty's name, to command you the ſaid conſtable of ——— aforeſaid, to take the ſaid* A. O. *and to convey him ſafely to the gaol aforeſaid, and to deliver him there to the keeper thereof, together with this warrant: And I do alſo hereby command you the ſaid keeper, ſafely to keep and detain the aforeſaid* A. O. *in your cuſtody in the ſaid gaol, until the ſaid ſum of* 10 s. *ſhall be duly paid for the uſe and purpoſe aforeſaid. Given under my hand and ſeal, the ——— day of ———.*

N. Warrant to receive the penalty for tipling; on 4 *J. c.* 5. 1 *J. c.* 9. 21 *J. c.* 7. 1 *C. c.* 4.

Weſtmorland. { To the churchwardens of the pariſh of ———

WHEREAS *it hath been duly proved before me ——— that* A. O. *of ——— labourer, did on the ——— day of ——— remain and continue drinking and tipling in a common alehouſe, known by the ſign of ——— at ——— in the ſaid pariſh, in the county aforeſaid, contrary to the ſtatutes in ſuch caſe made and provided, by reaſon whereof he hath forfeited the ſum of*

3 s. 4 d.

3 s. 4 d. *to the uſe of the poor of the ſaid pariſh: Theſe are therefore to require you forthwith to demand of the ſaid* A. O. *the ſaid ſum of* 3 s. 4 d. *And if he ſhall refuſe or neglect to pay the ſame as aforeſaid, by the ſpace of one week next after the date hereof, that you certify the ſame to me, together with the return of this precept. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ———.

O. Warrant to levy the penalty for tipling, on non-payment; on 4 *J. c.* 5. 1 *J. c.* 9. 21 *J. c.* 7. and 1 C. *c.* 4.

Weſtmorland. { To the conſtable of —— in the ſaid county.

WHEREAS *it hath been duly proved before me* ——— *that* A. O. *of* ——— *yeoman, did on the* ——— *day of* ——— *remain and continue drinking and tipling in a common alehouſe, known by the ſign of* ——— *at* ——— *in the pariſh of* ——— *in the ſaid county, contrary to the ſtatutes in ſuch caſe made and provided, by reaſon whereof he hath forfeited the ſum of* 3 s. 4 d. *to the uſe of the poor of the ſaid pariſh: And whereas on the* ——— *day of* ——— *I did by my warrant require the churchwardens of the ſaid pariſh to demand of the ſaid* A. O. *the ſaid ſum of* 3 s. 4 d. *to the uſe of the poor as aforeſaid: And whereas it appears to me, as well on the oath of* C. W. *churchwarden of the pariſh aforeſaid, as otherwiſe, that he the ſaid* C. W. *did on the* ——— *day of* ——— *duly demand of the ſaid* A. O. *the ſaid ſum for the uſe as aforeſaid, but that he the ſaid* A. O. *hath neglected to pay the ſame as aforeſaid, and that it is not as yet paid: Theſe are therefore to require you forthwith to diſtrain the goods and chattels of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs taken, the ſaid ſum ſhall not be paid, together with the reaſonable charges of taking and keeping the ſame, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay the ſaid ſum of* —— *to the churchwardens aforeſaid, for the uſe aforeſaid; returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And you are to certify to me, with the return of this precept, what you ſhall have done in the premiſſes. Given under my hand and ſeal, the* ——— *day of* ———.

P. Commitment to the ſtocks for tipling, on inability to pay the penalty; on 4 *J. c.* 5.

Weſtmorland. { To the conſtable of ———.

WHEREAS *it hath been duly proved before me* ——— *that* A. O. *of* ——— *yeoman, did on the* ——— *day of* ——— *remain and continue drinking and tipling in a common alehouſe, known by the ſign of* ——— *in* ——— *in the pariſh of* ——— *in the*

county aforesaid, contrary to the statutes in such case made and provided, by reason whereof he hath forfeited the sum of 3 s. 4 d. *to the use of the poor of the said parish; And whereas it duly appears to me, that the said* A. O. *is not able to pay the said forfeiture; These are therefore to require you to set the said* A. O. *in the stocks, there to remain by the space of four hours. And for your so doing, this shall be your sufficient warrant. Given under my hand and seal, this* ——— *day of* ———.

Q. Warrant to receive the penalty, on the first conviction of drunkenness; on 4 *J. c.* 21. and 21 *J. c.* 7.

Westmorland. { To the churchwardens of the parish of ——— in the said county.

FOrasmuch as it hath been fully proved this day, before me ——— *one of his majesty's justices of the peace in and for the said county, upon the oath of* A. I. *of* ——— *yeoman, that* A. O. *of* ——— *in the county aforesaid, on the* ——— *day of* ——— *at* ——— *aforesaid, in the parish of* ——— *in the said county, was drunk, contrary to the statute in such case made; and the said* A. O. *is thereof convicted before me, by which he hath forfeited the sum of* 5 s. *to be disposed of as is herein after mentioned: These are therefore, in his majesty's name, to command you the said churchwardens to demand and receive of and from the said* A. O. *the said sum of* 5 s. *to be by you accounted for, to the use of the poor of the said parish; and if he shall refuse or neglect to pay the same by the space of one week from and after the date hereof, that you make a return to me of such his refusal or neglect, and of this warrant. Given under my hand and seal, at* ——— *in the said county, the* ——— *day of* ———.

R. Warrant to levy the penalty of drunkenness, on non-payment; by 4 *J. c.* 5. 21 *J. c.* 7.

Westmorland. { To the constable of ——— in the said county.

WHEREAS A. O. *of* —— *in the parish of* ——— *in the county aforesaid, labourer, was on the* —— *day of* ——— *convicted before me* —— *one of his majesty's justices of the peace for the said county, for that he the said* A. O. *was on the* ——— *day of* —— *drunk, at* —— *aforesaid, in the parish and county aforesaid, by which he hath forfeited the sum of* 5 s. *And whereas I the said* —— *did issue my warrant on the* ——— *day of* ——— *to the churchwardens of the parish of* ——— *aforesaid, to demand and receive the said sum of* 5 s. *of and from the said* A. O. *And whereas it duly appears to me, as well on the oath of* C. W. *churchwarden of the parish of* ——— *aforesaid, as otherwise, that they the said churchwardens did on the* ——— *day of* ——— *duly demand the said sum*

ſum of 5 s. *of and from the ſaid* A. O. *but that he the ſaid* A. O. *hath neglected to pay the ſame as aforeſaid, and that it is not as yet paid: Theſe are therefore to command you forthwith to levy the ſaid ſum by diſtraining the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* [*ſix*] *days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges for taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained as aforeſaid, and out of the money ariſing by ſuch ſale, that you do pay the ſaid ſum of* 5 s. *to the churchwardens of the ſaid pariſh, for the uſe of the poor of the ſaid pariſh, rendring to him the ſaid* A. O. *the overplus upon demand, the neceſſary charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if the ſaid* A. O. *be not able to pay the ſaid ſum of* 5 s. *and ſufficient diſtreſs cannot be found whereof to levy the ſaid ſum, that you certify the ſame to me, together with the return of this warrant. Given under my hand and ſeal this* —— *day of* ——.

S. Commitment to the ſtocks for drunkenneſs, on inability to pay the penalty; on 4 *J. c.* 5. 21 *J. c.* 7.

Weſtmorland { To the conſtable of —— in the ſaid county.

WHEREAS A. O. *of* ——*in the ſaid county, labourer, was on the* —— *day of* —— *convicted before me* —— *one of his majeſty's juſtices of the peace for the ſaid county, for that he the ſaid* A. O. *was on the* —— *day of* —— *drunk at* —— *aforeſaid, in the pariſh of* —— *in the ſaid county, whereby he hath forfeited the ſum of* 5 s. *And whereas it duly appears to me, that the ſaid* A. O. *is not able to pay the ſaid ſum of* 5 s. *Theſe are therefore to require you in his majeſty's name, to ſet him the ſaid* A. O. *in the ſtocks, there to remain for the ſpace of ſix hours. Given under my hand and ſeal the* —— *day of* ——.

Alias Capias. See **Proceſs.**
Almanacks. See **Stamps.**

Annuities.

1. BY the ſeveral acts of 4 *W. c.* 3. 5 *W. c.* 5. 5 *W. c.* 20. and 2 & 3 *An. c.* 3. Annuitants on demanding their ſhare of annuities, in the caſe of ſurvivorſhip on the ſaid reſpective acts, ſhall (unleſs the nominee appear in perſon) produce a certificate of the life of ſuch nominee, to be ſigned *(gratis)* by the miniſter and churchwardens where the nominee lives, on the day

Certificate of the nominee's life.

day when the payment ſhall become due: Or otherwiſe the annuitant may make oath of the truth of ſuch nominee's life, on the day when the payment ſhall become due, before a juſtice of the peace where ſuch perſon making oath ſhall reſide; and the juſtice ſhall make a certificate thereof; for which oath and certificate no fee ſhall be taken. And perſons ſwearing falſly ſhall be guilty of perjury, and forging ſuch certificate ſhall be guilty of forgery.

Counterfeiting orders.

2. By the ſeveral acts of 9 *G.* *c.* 12. 4 *G.* 2. *c.* 9. and 9 *G.* 2. *c.* 34. If any perſon ſhall counterfeit any order to receive annuities; or power to transfer the ſame; or the name of the proprietor; or ſhall perſonate ſuch proprietor; he ſhall be guilty of felony without benefit of clergy.

Aſſignment of annuities.

3. By the ſeveral acts of 4 *An.* *c.* 6. 5 *An.* *c.* 19. 5 *An.* *c.* 22. and 6 *An.* *c.* 5. A juſtice may take affidavits of the due execution of the aſſignment or deviſe of annuities, upon the ſaid ſeveral acts reſpectively.

Apothecary. See Phyſicians.

Appeals.

Appeal, what.

1. THIS word has two ſignifications in law; the one is, removing a cauſe from an inferior court or judge, to a ſuperior; as from one or more juſtices, to the quarter ſeſſions.

The other kind of appeal (which is the ſubject of this title) is a proſecution againſt a ſuppoſed offender, by the party's own private action; proſecuting alſo for the crown, in reſpect of the offence againſt the publick. 2 *Haw.* 155.

In what caſes an appeal may be brought.

2. An appeal is brought in three caſes; 1. By a man for a wrong to his anceſtor. 2. By a wife for the death of her huſband. 3. For wrong done to the appellants themſelves, as in the caſe of robbery, rape, or maihem; but this laſt is diſuſed, on account of the nicety of the pleadings, and the charge of the proſecution; and the method of indictment is now generally taken. *Wood* 1072.

Within what time an appeal may be brought.

3. A perſon acquitted on an indictment of murder, ſhall not be ſet at liberty, but ſhall be re-committed, or bailed, till the year and day be paſt; within which time an appeal may be brought. 3 *H.* 7. *c.* 1.

Appeal brought before the ſheriff and coroner.

4. It is certain, that an appeal may be commenced before the ſheriff and coroner, and removed from them into the king's bench by *certiorari*. 2 *Haw.* 156.

Appeal brought before juſtices of the peace.

5. And it ſeems to be holden in *Fitzherbert*'s Abridgment, that juſtices of the peace have power to receive appeals; but there is much greater authority for the contrary opinion. 2 *Haw.* 156.

6. If

6. If the perſon appealed ſhall be acquitted, the appellor ſhall be impriſoned for a year, and reſtore damages to the party, and be grievouſly fined to the king. 13 *Ed.* 1. *ſt.* 1. *c.* 12. That is, if the appeal ſhall appear to the court to have been malicious. 2 *Haw.* 198. Perſon acquitted on appeal.

7. Foraſmuch as an appeal is the ſuit of the party, as well as of the king, hence it is that the king cannot pardon an offender found guilty upon an appeal, as he may when found guilty upon an indictment; for in ſuch caſe he can only pardon for himſelf, but not for the party. 2 *Haw.* 155. Pardon.

Apples and Pears.

WHEREAS apples and pears are frequently ſold by meaſure, commonly called water-meaſure, the contents whereof are very uncertain; therefore for the future, the ſaid meaſure ſhall be round, and in diameter eighteen inches and an half within the hoop, and eight inches deep; and ſo in proportion: And every meaſure, commonly called water-meaſure, by which apples and pears are ſold, ſhall be heaped as uſually: And whoſoever ſhall ſell or buy any apples or pears by any other meaſure, ſhall forfeit 10*s.* half to the informer, and half to the poor, on conviction on the oath of one witneſs, before one juſtice (or mayor), to be levied by the petty conſtable by warrant of the ſaid juſtice, by diſtreſs and ſale. 1 *An. ſt.* 1. *c.* 15. *ſ.* 1.

But this ſhall not extend to any meaſures ſealed and allowed by the fruiterers company in *London*. *ſ.* 2.

Concerning the robbing of orchards, ſee title Wood.

Apprehending offenders. See Arreſt.

Apprentices.

Apprentices.

Concerning the ſettlement of apprentices, ſee title Poor.

I. Who may take apprentices.
II. Who are compellable to be bound apprentices.
III. Binding.
IV. Binding of poor apprentices.
V. Money given to bind out poor apprentices.
VI. Binding poor apprentices to the ſea-ſervice.
VII. Differences between the maſter and apprentice.
VIII. Apprentice ſtealing his maſter's goods.
IX. Aſſigning apprentices.
X. Maſter dying.
XI. Apprentices ſetting up their trades.

I. Who may take apprentices.

In huſbandry. 1. EVERY perſon being an houſholder, and having and uſing half a plough-land in tillage, may take any apprentice above the age of ten years, and under eighteen, to ſerve in huſbandry till twenty-one at the leaſt, or till twenty-four as the parties can agree. 5 *El. c.* 4. *ſ.* 25.

In trades in towns corporate. 2. Every perſon being an houſholder, and twenty-four years old at the leaſt, dwelling in any city or town corporate, and exerciſing any art, miſtery, or manual occupation there, may retain the ſon of any freeman, not occupying huſbandry, nor being a labourer, and inhabiting in the ſame, or in any other city or town corporate, to ſerve and be bound as an apprentice, after the cuſtom and order of the city of *London*, for ſeven years at the leaſt, ſo as ſuch apprenticeſhip do not expire before the apprentice ſhall be twenty-four years of age. 5 *El. c.* 4. *ſ.* 26.

But no perſon dwelling in any city or town corporate, being a merchant, mercer, draper, goldſmith, ironmonger, imbroiderer, or clothier, ſhall take any apprentice except he be his ſon, or elſe that the father and mother of ſuch apprentice ſhall have an eſtate of inheritance or freehold of 40 *s.* a year, to be certified under the hands and ſeals of three juſtices where the lands lie, to the mayor of that city or town corporate, and to be inrolled among the records there. *ſ.* 27.

And the reaſon of this ſeems to be, for that ſuch as are to be bound apprentices in towns corporate, if their parents be of a competent livelihood, then their maſters ſhall be not only better ſecured, but ſuch apprentices alſo in likelihood ſhall have the better means

means to ſet up their trades after their time expired. And concerning ſuch whoſe parents have not 40 *s.* a year are fitter to be bound apprentices to huſbandry, and the like, in the country. *Dalt. c.* 58.

But by reaſon of the great alteration in the value of money ſince that time, this proviſion is become of little uſe; for an eſtate of 40 *s.* a year then, was equal to more than 10 *l.* a year now.

But the citizens of *London* and *Norwich* may take and have apprentices, as before this act. *ſ.* 40.

3. Every perſon being an houſholder, and twenty-four years old at the leaſt, and not occupying huſbandry, nor being a labourer, dwelling in any market town not corporate, and exerciſing any art, miſtery, or manual occupation, may have to apprentice the child or children of any other artificer, not occupying huſbandry, nor being a labourer, inhabiting in the ſame or any other ſuch market town in the ſame ſhire. 5 *El. c.* 4. *ſ.* 28. In trades in market towns not corporate.

But no perſon dwelling in any ſuch market town, being a merchant, mercer, draper, goldſmith, ironmonger, imbroiderer, or clothier, ſhall take any apprentice except he be his ſon, or elſe that his father and mother ſhall have an eſtate of inheritance or freehold of 3 *l.* a year, to be certified under the hands and ſeals of three juſtices of the ſhire where the lands lie, to the head officer of ſuch market town where ſuch apprentice ſhall be taken, there to be inrolled of record. *ſ.* 29.

4. Any perſon uſing the art of a ſmith, wheelwright, ploughwright, millwright, carpenter, rough maſon, plaiſterer, ſawyer, lime burner, brickmaker, bricklayer, tyler, ſlater, helier, tylemaker, linen-weaver, turner, cooper, miller, earthen potter, woollen weaver weaving houſhold cloth only, fuller otherwiſe called tucker or walker, burner of oare and woad aſhes, thatcher or ſhingler, whereſoever he ſhall dwell, may take the ſon of any perſon as apprentice, albeit his parents have no land. 5 *El. c.* 4. *ſ.* 30. In any place.

5. Every owner of a ſhip or veſſel, and every houſholder exerciſing the trade of the ſeas by fiſhing or otherwiſe, and every gunner commonly called a canoneer, and every ſhipwright, may take apprentices for ten years or under; and every apprentice ſo taken, being above ſeven years of age, ſhall be by the ſame covenants bound, ordered and uſed to all intents, according to the cuſtom of *London*, ſo that the covenant or bond of apprenticeſhip be made by writing indented, and inrolled in the town where the apprentice ſhall be inhabiting, if it be a town corporate, if not, then in the next town corporate: For which inrollment ſhall be paid not above 12 *d.* 5 *El. c.* 5. *ſ.* 12. Seamen.

6. Every perſon that ſhall have three apprentices in any the crafts of a clothmaker, fuller, ſheerman, weaver, taylor, or ſhoemaker, ſhall keep one journeyman; and for every other apprentice above three, one other journeyman, on pain of 10 *l.* half to the king, and half to him that ſhall ſue in the ſeſſions or other court of record; or if it is in a town corporate, then to be applied as by the charter. 5 *El. c.* 4. *ſ.* 33. Number reſtrained.

No

No hatmaker ſhall have above two apprentices at one time, nor thoſe for any leſs term than ſeven years, on pain of 5 *l.* a month, half to the king, and half to him that ſhall ſue in any court of record: But this not to extend to his own ſon, in his own houſe, ſo as he be bound by indenture for ſeven years, and his term not to expire before he be twenty-two years of age. 1 *J.* *c.* 17. *ſ.* 3, 5.

Weavers of ſtuffs in *Norfolk* and *Norwich*, that ſhall employ two apprentices, ſhall alſo employ two journeymen; and no maſter ſhall have above two apprentices, or any week boy, to weave in the ſaid trade; on pain of 5 *l.* a month to the king. 13 & 14 *C.* 2. *c.* 5. *ſ.* 18.

II. Who are compellable to be bound apprentices.

Who ſhall be bound.

1. If any perſon ſhall be required by any houſholder, uſing half a ploughland at leaſt in tillage, to be an apprentice and to ſerve in huſbandry, or in any other art, miſtery, or ſcience before expreſſed, and ſhall refuſe ſo to do, then on complaint of ſuch houſekeeper to one juſtice (or head officer) he ſhall ſend for the perſon refuſing; and if he ſhall think the ſaid perſon meet to ſerve, and ſuch perſon refuſe to be bound, he may commit him to ward, there to remain until he be contented, and will be bound. 5 *El.* *c.* 4. *ſ.* 35.

At what age.

2. But no perſon ſhall be bound to enter into any apprenticeſhip, other than ſuch as be under the age of 21 years. 5 *El.* *c.* 4. *ſ.* 36.

III. Binding.

Binding to be by deed.

1. One cannot be bound an apprentice without deed. 1 *Salk.* 68.

And indented.

2. And by the 5 *El.* *c.* 4. it muſt be by deed indented. *ſ.* 25. *M.* 1 *G.* 2. *Smith* and *Birch*. An action was brought againſt the defendant, for enticing away and detaining the plaintiff's apprentice, who had agreed by writing to ſerve the plaintiff for ſeven years. Upon evidence it appeared, that the ſtyle of the writing began *This indenture*, &c. but in fact the parchment was not indented, but was a deed poll. On exception taken to the deed, it was inſiſted that the young man was not an apprentice, becauſe he was not bound by indenture. An infant can be bound no other way than as the ſtatute of 5 *El.* directs, which is by indenture, and nothing can make this good. The deed cannot now be indented, for that would be a forgery. Therefore unleſs the plaintiff ſhews the apprentice to be of full age at the time of ſigning ſuch deed, he cannot be accounted his apprentice, and by conſequence no action can lie for detaining the apprentice; neither can the plaintiff prove him to be his ſervant by this deed, for he has declared for an apprentice, and muſt prove him ſo to be. Therefore the plaintiff was nonſuited. *Seſſ. Ca. V.* 1. 222.

And by the name of an apprentice.

3. And an apprentice muſt be retained by the name of an apprentice expreſly, otherwiſe he is no apprentice, tho' he be bound. *Dalt.* *c.* 58.

4. And all indentures, covenants, promiſes, and bargains, for having or taking apprentices, otherwiſe than by the ſtatute of 5 *El.* ſhall be clearly void in the law to all intents and purpoſes; and every perſon that ſhall take any apprentice contrary to the ſaid act, ſhall forfeit 10 *l.* half to the king, and half to him that ſhall ſue in the ſeſſions, or other court of record; or if it is in a town corporate, then to the uſe of ſuch town as by the charter. 5 *El. c.* 4. *ſ.* 41. Binding otherwiſe, void.

5. By the ſeveral ſtamp acts, the binding (except it be of pariſh apprentices) ſhall be on a treble ſixpenny ſtamped paper or parchment; and the ſame ſhall not be given in evidence in any court till it be ſtamped, and the duties paid. Stamp.

6. And by the 8 *An. c.* 9. Beſides the ſaid ſtamps and duties, there ſhall be paid the duty of 6 *d.* for every 20 *s.* of every ſum of 50 *l.* or under; and the duty of 1 *s.* for every 20 *s.* of every ſum above 50 *l.* given with any apprentice; and proportionably for greater or leſſer ſums; to be paid by the maſter. *ſ.* 32. Additional ſtamp.

And where any thing, not being money, ſhall be given with ſuch apprentice, the duties ſhall be anſwered for the value thereof. *ſ.* 44.

But this ſhall not extend to any apprentice, put out at the common charge of any pariſh or townſhip, or out of any publick charity. *ſ.* 40.

And the full ſum ſhall be inſerted in the indenture in words at length, and ſhall bear date on the day of the execution thereof; on pain that the maſter ſhall forfeit double, half to the king, and half with full coſts to him that ſhall ſue. *ſ.* 35.

And no ſuch indenture ſhall be given in evidence in any ſuit to be brought by any the parties thereunto, unleſs ſuch party on whoſe behalf the ſame ſhall be given in evidence, do firſt make oath, that to the beſt of his knowledge, the ſum therein inſerted was really and truly all that was directly or indirectly to be given with ſuch apprentice. *ſ.* 43.

The ſaid indentures, within the bills, ſhall be brought to the head office to be ſtamped with a ſtamp for that purpoſe, and the duties paid within one month after date. *ſ.* 36.

And elſewhere ſhall be brought either to the head office within the bills, or to a collector of the ſtamp duties out of the ſaid limits, in two months after date, and the duties thereupon ſhall be paid, and the indenture ſtamped, if it be at the ſaid head office; otherwiſe ſuch collector ſhall indorſe on the indenture, a receipt for the duties in words at length, and ſubſcribe his name thereto. *ſ.* 37.

And if it is within 50 miles of the limits of the bills of mortality, the indenture ſhall within three months after date, and elſewhere within ſix months, be brought to the head office to be ſtamped. *ſ.* 38.

And all ſuch indentures wherein ſhall not be inſerted the full ſum directly or indirectly given, or whereupon the duties ſhall not be paid, or which ſhall not be ſtamped within the time limited, ſhall be void, and not available in any court or place, or to any purpoſe

purpoſe whatſoever; and the apprentice ſhall be incapable of exerciſing the ſaid trade. *ſ.* 39.

Moreover, by the 9 *An. c.* 21. If the maſter ſhall neglect to pay the duties within the time limited, he ſhall forfeit 50 *l.* half to the king and half with full coſts to him who ſhall ſue. *ſ.* 66.

And by the 18 *G.* 2. *c.* 22. If he ſhall neglect to pay the ſame as aforeſaid, he ſhall, beſides all other penalties, forfeit double duty. *ſ.* 23, 24.

But by the 28 *G.* 2. *c.* 19. For relief of perſons, who have omitted to pay the ſaid duties, on payment thereof on or before *Aug.* 1. 1755. and tendring the indentures to be ſtamped on or before *Sep.* 29. 1755. of which timely notice ſhall be given in the gazette, they ſhall be good.

And there is the like indemnifying clauſe in ſome act every two or three years.

And by the 20 *G.* 2. *c.* 45. If any maſter, having forfeited the double duty, ſhall pay the ſame, and tender the indenture to be ſtamped, within two years after the determination of the apprenticeſhip, and before ſuit hath been commenced for the penalties, the indenture ſhall be valid, and the penalties diſcharged. *ſ.* 5.

And if after the maſter ſhall have forfeited the double duty, the apprentice ſhall in the preſence of, or by writing under his hand ſigned in the preſence of one witneſs, require his maſter to pay the ſame, and the maſter ſhall not do it in three months, and ſuch apprentice ſhall at any time within two years after the determination of his apprenticeſhip, pay the double duty, he may in three months after ſuch payment demand of his maſter double the ſum contracted for in the indenture, and if not paid in three months after, may recover the ſame by action at law, with full coſts. And the apprentice immediately after payment of the ſaid double duties (if his apprenticeſhip ſhall not be then expired) and ſignifying by writing under his hand, that he deſires to be diſcharged from his apprenticeſhip, ſhall be diſcharged accordingly, and ſhall have the ſame benefit of the time he hath ſerved as he would have had in caſe he had been aſſigned, or turned over to a new maſter. *ſ.* 6, 7.

And where any proſecution ſhall be commenced againſt the maſter for the penalties, if the apprentice ſhall pay the double duty at any time in two years after the end of his apprenticeſhip, he may thereupon exerciſe his trade, and the indenture ſhall be valid, and may be given in evidence. *ſ.* 8.

Infant bound, tho' under age.

7. Every perſon that ſhall be bound by indenture, to ſerve as an apprentice in any art, ſcience, occupation, or labour, according to the ſtatute of the 5 *El.* albeit he be within 21 years of age, ſhall be bound as amply to every intent, as if he were of full age at the time of making the indentures. *ſ.* 43.

But this is to be underſtood of a compulſion by the means preſcribed by the ſtatute; for altho' an infant may voluntarily bind himſelf apprentice, and if he continue apprentice for ſeven years, he may have the benefit to uſe his trade; yet neither at the common law, nor by any words of this ſtatute, a covenant or obligation of an infant for his apprenticeſhip ſhall bind him. But if he miſbehave

miſbehave himſelf, the maſter may correct him in his ſervice, or complain to a juſtice to have him puniſhed, according to the ſtatute. But no remedy lieth againſt an infant upon ſuch covenant. *Cro. Car.* 179.

IV. Binding of poor apprentices.

Power to bind.

1. The churchwardens and overſeers, or the greater part of them, by the aſſent of two juſtices (1 *Q.*) may bind (A) any ſuch children, whoſe parents they ſhall judge not able to maintain them, to be apprentices where they ſhall ſee convenient, till ſuch man child ſhall come to the age of 24, and ſuch woman child to the age of 21 or marriage; the ſame to be as effectual to all purpoſes, as if ſuch child were of full age, and by indenture of covenant bound him or her ſelf. 43 *El. c.* 2. *ſ.* 5.

Power to take.

2. And all perſons, to whom the overſeers ſhall by the 43 *El.* bind any children apprentices, may take and keep them as apprentices. 21 *J. c.* 28. 3 *C. c.* 4. *ſ.* 22.

Indenture to be ſtamped.

3. By the ſeveral ſtamp acts, the indenture muſt be on a ſixpenny ſtamped piece of paper or parchment; but is exempted from the additional ſtamps and duties for money given with the apprentice.

Perſons refuſing to take.

4. And where any poor child ſhall be appointed to be bound apprentice by the 43 *El.* the perſon to whom he is appointed to be bound, ſhall receive and provide for him, and alſo execute the other part of the indentures; and if he ſhall refuſe ſo to do, oath being thereof made by one of the churchwardens or overſeers, before two juſtices, he ſhall forfeit 10*l.* by diſtreſs and ſale, by warrant (B) of ſuch juſtices, to the uſe of the poor of the pariſh or place where the offence was committed; ſaving always to the perſon, to whom any poor child ſhall be appointed to be bound apprentice, if he ſhall think himſelf aggrieved thereby, his appeal to the next ſeſſions, whoſe order therein ſhall be final. 8 & 9 *W. c.* 30. *ſ.* 5.

And as the churchwardens and overſeers have power to place out poor children, therefore they are proper judges of perſons who are fit to be their maſters; and thoſe are, all perſons, who by their profeſſion or manner of living have occaſion to keep ſervants; but the ſame are to be approved of by the juſtices, and if ſuch maſter is diſſatisfied, he may appeal to the ſeſſions. *Dalt. c.* 58.

T. 13 *W. Minchamp*'s caſe. Two juſtices bound an apprentice to a *merchant*: He appealed to the ſeſſions, and the order was diſcharged. And now the court, on conſideration of the matter, confirmed the order of ſeſſions; becauſe the act having made perſons compellable to take apprentices, and given an appeal to the ſeſſions, it was in the diſcretion of the juſtices at ſeſſions to determine, whether it was or was not fitting to put an apprentice upon any one; and therefore the court would not diſturb what the ſeſſions had done, but confirmed the order. 2 *Salk.* 491.

E. 13 *An. Q.* and *Wagſtaff*. It was moved to quaſh an order to compel a perſon to take an apprentice, becauſe in the cloſe of indenture it was ſaid, that the maſter, at the end of the term, ſhall

give his apprentice two ſuits of cloaths. Upon debate, the court held this to be ill; for the juſtices during the term of his apprenticeſhip cannot order him wages, they muſt only order him a maintenance as an apprentice, and cannot order him any thing after the term is ended. So the order was quaſhed. *Foley* 205. *Seſſ. C. V.* 1. 48.

In what caſe he ſhall go with the farm.

5. A leſſee for years of a farm takes an apprentice, and the term expires before the apprenticeſhip is ended, he muſt go with the farm, if the maſter will permit him; but where a man taketh an apprentice by reaſon of his ability, and the maſter dies before the determination of the apprenticeſhip, ſuch apprentice ſhall go to the executor or adminiſtrator if he hath aſſets, and if none, then he muſt return to the pariſh where laſt ſettled. *Show.* 405.

V. Money given to bind out poor apprentices.

By the 7 *J. c.* 3. All money given by any perſon to be continually employed for the binding out apprentices, ſhall be employed in manner following, unleſs otherwiſe ordered by the givers; *viz.* All corporations or towns corporate, and in places not corporate, the miniſter, conſtables, churchwardens, overſeers, or the moſt part of them, ſhall have the nomination and placing of ſuch apprentices, and ordering of ſuch money; and if they ſhall not employ the ſame accordingly, every perſon offending ſhall forfeit 3 *l.* 6 *s.* 8 *d.* half to the poor, and half to him that ſhall ſue. *ſ.* 2.

And the maſter that ſhall receive the money, ſhall be bound with one or two ſureties in double the ſum, unto ſuch corporation, or to the other perſons appointed by this act in places not corporate, to take care of it, on condition to repay it at the end of ſeven years, or within three months thereof; and if the apprentice ſhall happen to die within the ſeven years, then within one year after ſuch death; and if the maſter ſhall die, then within one year after ſuch maſter's death. *ſ.* 3.

And the ſaid money ſhall always be put forth in three months after it ſhall come to the ſaid parties hands; and if there are not then fit perſons to be bound apprentices, within the places where the money is given to be employed, it ſhall be diſpoſed of for binding ſome of the pooreſt children of any adjoining pariſh. *ſ.* 4.

And choice ſhall always be made of the pooreſt children; and no ſuch apprentice ſhall be above 15 years of age when bound. *ſ.* 5.

And the ſaid perſons, in places not corporate, ſhall yearly within a month after *Eaſter*, account to their ſucceſſors before two juſtices dwelling in or next to the place. *ſ.* 6.

And if any of the truſtees ſhall break their truſt, or commit any offence for which no penalty is given by this act; any perſon may petition the lord chancellor, who may iſſue a commiſſion to hear and determine the ſame, and may levy the money miſemployed upon ſuch defaulters, or otherwiſe upon ſuch able inhabitants of the place, as they ſhall think fitteſt; and perſons aggrieved may appeal to the lord chancellor. *ſ.* 7.

VI. Bind-

VI. Binding poor apprentices to the ſea ſervice.

Who may be bound.

1. It ſhall be lawful for two juſtices, and for the head officers in corporations, and for the churchwardens and overſeers of the ſeveral pariſhes or townſhips, with the conſent of ſuch juſtices or head officers, to bind and put out any boy of the age of ten years or upwards, or who ſhall be chargeable, or whoſe parents ſhall be chargeable, or who ſhall beg for alms, to be an apprentice to the ſea ſervice, to any ſubject being maſter or owner of any ſhip or veſſel, until he ſhall attain the age of 21 years. 2 & 3 *Ann.* *c.* 6. *ſ.* 1.

And every perſon to whom any poor pariſh boy ſhall be put apprentice by the 43 *El.* may, with the conſent of two juſtices dwelling near the pariſh where ſuch poor boy was bound, or with the like conſent of the chief officer in a corporation, at the requeſt of the maſter, his executors, adminiſtrators, or aſſigns, by indenture aſſign over ſuch poor boy apprentice, to any maſter or owner of a ſhip or veſſel, uſing the ſea ſervice, during the remaining time of his apprenticeſhip. *ſ.* 6.

Who ſhall take.

2. And every maſter or owner of a ſhip, from 30 to 50 ton burden, ſhall be obliged to take one ſuch apprentice, and one more for the next 50 ton, and one more for every hundred ton ſuch ſhip ſhall exceed the burden of an hundred ton; on pain of forfeiting 10 *l.* to the poor of the pariſh from whence ſuch boy was bound. *ſ.* 8.

But no maſter ſhall be obliged to take any ſuch apprentice, under 13 years of age, or who ſhall not appear to be fitly qualified both as to health and ſtrength of body for that ſervice. 4 *Ann.* *c.* 19. *ſ.* 16.

Age to be inſerted in the indenture.

3. The boy's age ſhall be inſerted in the indenture, being truly taken from a copy of the entry in the regiſter book (where it can be had), which copy ſhall be given and atteſted by the miniſter without fee: And where no ſuch entry can be found, two ſuch juſtices, and ſuch head officers, ſhall as fully as they can inform themſelves of ſuch boy's age, and from ſuch information ſhall inſert the ſame in the indentures. 2 & 3 *An.* *c.* 6. *ſ.* 1.

What money ſhall be given with him.

4. And the churchwardens and overſeers ſhall pay down to the maſter, at the time of the binding, the ſum of 50 *s.* for cloathing and bedding; and the charges by this act appointed, ſhall be allowed on their accounts. 2 & 3 *An.* *c.* 6. *ſ.* 2.

Indenture to be regiſtred.

5. The churchwardens and overſeers ſhall ſend the indentures to the collector of the cuſtoms at the port whereunto the maſter belongeth; who ſhall enter the indenture in a book, and make an indorſement upon the indenture of the regiſtry thereof, ſubſcribed by him, without fee. And if he ſhall neglect or refuſe to enter ſuch indentures, and indorſe the ſame, or make falſe entries, he ſhall forfeit 5 *l.* to the poor of the pariſh from whence ſuch boy was bound. 2 & 3 *An.* *c.* 6. *ſ.* 5.

Apprentice how conveyed to the port.

6. Such apprentice ſhall be conveyed to the port to which his maſter belongeth, by the churchwardens and overſeers, or their

agents; and the charges thereof ſhall be paid as by the vagrant act of 11 & 12 *W.* 2 & 3 *An.* *c.* 6. *ſ.* 10.

That is to ſay, out of the gaol and marſhalſea money; which by the 12 *G.* 2. *c.* 29. is directed to be paid out of the general county rate.

Counterpart to be then executed.

7. The counterpart of the indenture ſhall be ſealed and executed by the maſter, and atteſted by the collector of the port, and the conſtable or other officer who carries the apprentice; which officer ſhall tranſmit ſuch counterpart, to the churchwardens and overſeers of the place from whence the apprentice was bound. 2 & 3 *An.* *c.* 6. *ſ.* 11.

Protection from being impreſſed.

8. And the collector or his deputy ſhall tranſmit a certificate under his hand, to the commiſſioners of the admiralty, containing the name and age of ſuch apprentice, and to what ſhip he belongs; and on receipt of ſuch certificate, a protection ſhall be made and given *gratis* to ſuch apprentice, till he attain the age of 18 years. 2 & 3 *An.* *c.* 6. *ſ.* 5.

Alſo every perſon who ſhall voluntarily bind himſelf apprentice to the ſea ſervice, ſhall not be impreſſed for three years from the date of his indentures; which indentures ſhall be regiſtred, and certificates thereof given and tranſmitted by the collector as aforeſaid; on receipt of which certificates, protections ſhall be made and given for the firſt three years, without fee. *id.* *ſ.* 15.

But by 4 *An.* *c.* 19. No perſon of the age of 18 years ſhall have any protection from being impreſſed, who ſhall have been in any ſea ſervice, before he bound himſelf apprentice. *ſ.* 17.

But every perſon not having before uſed the ſea, who ſhall bind himſelf apprentice to ſerve at ſea, ſhall be exempted from being impreſſed for three years: and the commiſſioners of the admiralty, on due proof of the circumſtances, ſhall grant a protection accordingly, without fee. 13 *G.* 2. *c.* 17.

When impreſſed, the maſter to have the wages.

9. When ſuch pariſh or voluntary apprentice ſhall be impreſſed, or voluntarily enter into the king's ſervice, the owner or maſter, his executors, adminiſtrators, or aſſigns, ſhall be intitled to able ſeamens wages, for ſuch of the apprentices, as ſhall upon due examination be found qualified for the ſame, notwithſtanding their indentures of apprenticeſhip. 2 & 3 *An.* *c.* 6. *ſ.* 17.

Exempted from the 6*d.* a month.

10. Such poor boys bound out, or aſſigned over, to the ſea ſervice, until they ſhall attain to the age of 18 years, ſhall be exempted from the payment of 6*d.* a month to *Greenwich* hoſpital. 2 & 3 *An.* *c.* 6. *ſ.* 7.

Maſter to enter his apprentices on clearing out.

11. Every maſter ſo obliged to take ſuch apprentice, ſhall after his arrival into any port aforeſaid, and before he clears out of ſuch port, give an account in writing under his hand, to the collector, containing the names and number of ſuch apprentices as are there remaining in his ſervice. 2 & 3 *An.* *c.* 6. *ſ.* 9.

The ſame to be inſerted in the cocquet.

12. And every cuſtom houſe officer ſhall inſert at the bottom of their cocquets, the number of men and boys on board the reſpective ſhips at their going out, deſcribing the apprentices by their names, ages, and dates of their indentures, for which no fee ſhall be taken. 2 & 3 *An.* *c.* 6. *ſ.* 14.

13. And

13. And the collector in the port shall keep a register, containing the number and burden of all ships belonging to the port, together with the masters or owners names, and also the names of all such apprentices in such ships, and from what parishes and places they were sent; and shall transmit *(gratis)* true copies thereof signed by him, to the quarter sessions, or to such towns corporate, parishes, or places, when and so often as he shall be reasonably required so to do; and every collector refusing or neglecting to send such copy, shall forfeit 5 *l.* to the poor of the parish from whence such boy was bound. 2 & 3 *An. c.* 6. *s.* 13. Registry to be kept in the ports.

14. Two justices near the port, and mayors of towns corporate, in or near adjoining to such port, to which such ship or vessel shall at any time arrive, may determine all complaints of ill usage from the master to such apprentice, and also of all such as shall voluntarily put themselves apprentices to the sea service, and make such order therein as they are now enabled by law to do, in other cases between masters and apprentices. 2 & 3 *An. c.* 6. *s.* 12. Differences between such masters and apprentices.

15. All the penalties aforesaid shall, by warrant of two justices of the county, city, or town corporate, be levied by distress and sale. 2 & 3 *An. c.* 6 *s.* 18. Penalties.

16. If the master shall die during the term, his widow, or his executor or administrator may assign over such apprentice to any other master who hath not his complement of apprentices. 4 *An. c.* 19. *s.* 16. Master dying.

VII. Differences between the master and apprentice.

1. The master is allowed by law with moderation to chastise his apprentice. *Dalt. c.* 58. Master may chastise his apprentice.

2. An apprentice cannot be discharged but by writing; for that an apprentice cannot be but by writing: but the master and apprentice may, by agreement between themselves, leave each other; and if so, then the master may give leave under his hand for the apprentice to depart; and then one justice out of sessions may discharge him, allowing the cause of his departure. *Dalt. c.* 58. Whether the master himself can discharge his apprentice.

But it seemeth that this shall not extend to parish apprentices, for that there the overseers are parties to the contract, which cannot therefore be avoided by any agreement between the master and his apprentice.

But if the master and his apprentice cannot agree, they may proceed in one of these two ways; either upon the statute of the 5 *El. c.* 4. or upon the statute of 20 *G.* 2. *c.* 19.

3. By the 5 *El. c.* 4. *If any such master shall misuse or evil intreat his apprentice, or the said apprentice shall have any just cause to complain, or the apprentice do not his duty to his master, then the said master or apprentice being grieved, and having cause to complain, shall repair unto one justice* (C D) *of the county, or to the mayor or other head officer of the said city, town corporate, or market town, or other place where the master dwelleth; who shall by his wisdom and discretion take such order and direction between the master and his apprentice, as the equity of the cause shall require;* Differences between the master and apprentice by 5 El. c. 4.

and if for want of good conformity in the maſter, the ſaid juſtice (or head officer) cannot compound and agree the matter, he ſhall take bond of the ſaid maſter to appear at the next ſeſſions; and on his appearance, and hearing of the matter there, if it be thought meet to diſcharge the ſaid apprentice, then the juſtices, or four of them at the leaſt (1 Q.) *or the ſaid mayor or other head officer, with the conſent of three other of his brethren, or men of beſt reputation in ſuch city, town corporate, or market town, ſhall have power, in writing* (E) *under their hands and ſeals, to pronounce and declare, that they have diſcharged the ſaid apprentice of his apprenticehood, and the cauſe thereof: And the ſaid writing, being inrolled by the clerk of the peace, or town clerk, amongſt the records, ſhall be a ſufficient diſcharge for the apprentice againſt his maſter, his executors and adminiſtrators. And if the default ſhall be found to be in the apprentice, then the ſaid juſtice, or the ſaid mayor or other head officer, with the aſſiſtance aforeſaid, ſhall cauſe ſuch due correction and puniſhment to be adminiſtred unto him, as by their wiſdom and diſcretions ſhall be thought meet.* ſ. 35.

If any ſuch maſter] That is, any ſuch maſter as is before mentioned in this ſtatute, in the trades therein ſpecified; and the former reſolutions confined the ſenſe of the ſtatute to ſuch trades only, but the later adjudications ſeem to extend the equity thereof to other trades not mentioned in the ſtatute; as in the following inſtances:

M. 7 *W. K.* and *Gately.* On a *certiorari* it was moved to quaſh an order of ſeſſions, for the diſcharge of one *Edward Green* from his apprenticeſhip to the defendant *Gately.* The fact was, that *Gately* was a mountebank, and being at a place in *Yorkſhire*, where he kept a publick ſtage, *Green* was by indenture bound apprentice to him in this manner, *viz.* to *Robert Gately*, ſurgeon, to learn the trade he now uſeth; and immediately he went upon the ſtage, and ever ſince continued in the employ. After which, being with his maſter *Gately* in *Middleſex*, he complained to the juſtices, that his maſter did not teach him the trade. Upon which they diſcharged him. This being done, *Green* ſet up the trade of mountebank himſelf. It was moved to quaſh the order, the juſtices being willing, becauſe they were impoſed upon. And the exception was, that the ſtatute of the 5 *El.* in diſcharging apprentices is confined, and extends only to apprentices mentioned in that clauſe, and there neither ſurgeon nor mountebank is mentioned: And tho' a ſurgeon may be a trade within the ſtatute, which a man cannot exerciſe without ſerving an apprenticeſhip to, becauſe that clauſe of the ſtatute is general; yet this part of the ſtatute, relating to the diſcharge of apprentices, extends only to trades there mentioned. By the court; The clauſe relating to the diſcharge of apprentices is general, and goes to all manner of apprentices, even to thoſe of merchants; but afterwards the court were of opinion, that the power of diſcharging reaches only to the trades mentioned in the ſtatute, among which a ſurgeon is not mentioned; for that, tho' as to the ſerving ſeven years apprenticeſhip, a ſervant comes under the general term of arts and miſteries,

yet

yet the power of diſcharging reaches only to the trades particularly mentioned. 2 *Salk.* 471, 2.

And *M.* 12 *An. R.* and *Furneſe.* It was held, that the ſtatute extends only to the trades therein mentioned; and therefore not to a glaſs bottle maker. *Caſe of S.* 29.

On the other hand, in the caſe of *K.* and *Collingbourn*, *M.* 12 *G.* Exception was taken to an order of diſcharge, that the juſtices could not diſcharge the apprentice, becauſe the trade to which he was bound, *viz.* a glazier, was not within the ſtatute: But not allowed; for tho' formerly it was held, that the trade ought to be a trade within the ſtatute, yet the later reſolutions have been otherwiſe. L. *Raym.* 1410. *Str.* 663.

And in *K.* and *Amies*, 7 *G.* 2. It was reſolved, that the juſtices have juriſdiction as to diſcharging apprentices, as well in other trades as thoſe mentioned in the ſtatute. *Nelſ. Appr.*

So in *K.* and *Cuſt*, *E.* 8 *G.* 2. that the ſtatute extends to trades not mentioned therein. *Nelſ. Appr.*

Shall miſuſe or evil intreat his apprentice] *E.* 8 *G.* 2. *K* and *Eaſman.* An apprentice was diſcharged, the maſter having *uſed him unkindly*, and refuſing to provide for and entertain him: But by the court, this is not a good ground for the diſcharge; for there is a power to oblige the maſter to receive and entertain the apprentice, and *uſing him unkindly* is too looſe. *Strange* 1014.

Or the apprentice do not his duty to his maſter] *T.* 4 *G.* *K.* and Inhabitants of *Hales Owen.* An order reciting that *Joſeph Higgen* was bound out by indenture, as the ſtatute requires, to *John Parks*, and being lame, and having the king's evil, and in the opinion of ſurgeons incurable; therefore the juſtices diſcharge the maſter from his apprentice. It was moved to confirm the order, becauſe the maſter cannot now have the end of the binding, which was, the ſervice of his apprentice. But it was anſwered, that the ſtatute only impowers the juſtices to diſcharge for miſbehaviour, and not for ſickneſs. And quaſhed by the court; for the maſter takes the apprentice for better and worſe, and is to provide for him in ſickneſs and in health. *Strange* 99.

Shall repair unto one juſtice] Upon an order made at the ſeſſions to diſcharge an apprentice, it did not appear, that he applied himſelf to a juſtice firſt. And *Holt* Ch. J. was of opinion, that the juſtice hath power to make an order, and if obeyed by the maſter, then the ſeſſions can have no power; if diſobeyed, then the juſtice upon complaint may bind the maſter to the ſeſſions, and that the ſeſſions have no power otherwiſe. 1 *Salk.* 67.

T. 13 *W.* *K.* and *Johnſon.* Exception was taken to an order for diſcharging an apprentice, that the complaint was made originally at ſeſſions, without any previous application to a ſingle juſtice out of ſeſſions: *Holt* Ch. J. delivered the opinion of the court, That the order was good; if it had been a new queſtion, he ſhould have held a prior application to ſome juſtice out of ſeſſions neceſſary; but after ſo many orders affirmed in this court, which have been otherwiſe, it is too late to unſettle that now. 1 *Salk.* 68.

So alſo, in the caſe of *K.* and *Gill*, *H.* 5 *G.* It was ſaid by the court,—It hath been ſo often reſolved, that the ſeſſions hath an original juriſdiction, that we will not ſuffer it now to be made a queſtion, though it might be doubtful upon the ſtatute itſelf. *Strange* 143.

And, *T.* 12 *G. K.* and *Davie*. The court agreed, that it is a point not now to be diſputed, that the ſeſſions hath an original juriſdiction to diſcharge apprentices. *Strange* 704.

On his appearance] *E.* 13 *W. Ditton*'s caſe. It was moved to quaſh an order made for the diſcharge of an apprentice. The queſtion aroſe upon the clauſe of the ſtatute, which directs, that upon appearance of the maſter, the apprentice may be diſcharged by four juſtices, after one juſtice out of ſeſſions hath endeavoured to compoſe the matter in difference. And in this caſe, it was objected, that *Ditton* the maſter was bound over to appear, and did not; and the juſtices have but a limited juriſdiction, and it is expreſly directed by the act, that the diſcharge is to be made on the appearance of the maſter; beſides, there is another remedy, to proceed on the recognizance, which is forfeited by not appearing. By the court; The act muſt have a reaſonable conſtruction, ſo as not to permit the maſter to take advantage of his own obſtinacy; and it would be very hard, that ſuppoſing the maſter is profligate, and runs away, the apprentice ſhall never be diſcharged. 2 *Salk.* 490.

H. 5 *G. K.* and *Gill.* An order of ſeſſions for diſcharging an apprentice was quaſhed, becauſe it did not ſet forth, that the maſter was ſummoned, or did appear. *Strange* 143.

So alſo, *E.* 8 *G.* 2. *K.* and *Eaſman*. The order was quaſhed, becauſe it did not appear that the maſter was preſent or ſummoned, which it is plain the act intended he ſhould be. *Strange* 1013.

Inrolled by the clerk of the peace] *T.* 4 *G. K.* and Inhabitants of *Hales Owen*. The order of diſcharge was not inrolled; and by the court for that reaſon held ill. *Strange* 99.

Shall be a ſufficient diſcharge for the apprentice againſt his maſter] But as the juſtices may diſcharge the apprentice from his maſter, for ill uſage; ſo alſo they may diſcharge the maſter from the apprentice for evil and diſorderly behaviour. *Read. Appr.*

Diſcharge] *T.* 13 *W. K.* and *Johnſon*. Exception was taken to an order of diſcharge, that the juſtices had ordered money to be returned: But by the court, the order is good. And *Holt* Ch. J. ſaid, he never doubted of that matter, for it is a power conſequential upon their juriſdiction to diſcharge. 1 *Salk.* 68.

But in the caſe of *K.* and *Vandeleer*, *M.* 4 *G.* The juſtices at the ſeſſions did order an apprentice to be diſcharged, and that the maſter having received 5 *l.* with him, ſhould refund 3 *l.* as a further proviſion for him. This was moved to be quaſhed, becauſe the ſtatute which gives the juſtices power to diſcharge, gives them no authority to order any money to be returned. By the court; It is very hard, that if the maſter miſuſeth his apprentice, the next day after he is bound, he ſhould pay back nothing if he is diſcharged:

charged: It will be an encouragement to maſters to treat their apprentices ill; but the ſtatute being ſilent, the order muſt be quaſhed. *Strange* 69.

Shall cauſe due correction and puniſhment to be adminiſtred] It ſeemeth that by the 7 *J.* *c.* 4. one juſtice may ſend the apprentice to the houſe of correction as an idle and diſorderly perſon, if he is in fault; tho' this cannot be done by this act of the 5 *El.* *Wood* 85.

4. By the 20 G. 2. *c.* 19. *On complaint* (F) *unto two juſtices, by any pariſh apprentice, or other apprentice upon whoſe binding out no larger a ſum than* 5 l. *was paid, concerning any miſuſage, refuſal of neceſſary proviſion, cruelty, or other ill treatment, they may ſummon* (G) *the maſter or miſtreſs, to appear before them at a reaſonable time to be named in ſuch ſummons; and on proof upon oath of the truth of the ſaid complaint (whether the maſter or miſtreſs be preſent or not, if ſervice of the ſummons be alſo upon oath proved) the ſaid juſtices may diſcharge* (H) *the apprentice by warrant or certificate under their hands and ſeals, for which warrant or certificate no fee ſhall be paid.* ſ. 3. Differences between the maſter and apprentice by 20 G. 2. c. 19.

And ſuch juſtices on complaint (I K) *on oath by any maſter or miſtreſs, againſt any ſuch apprentice, concerning any miſdemeanor, miſcarriage, or ill behaviour, may hear and determine the ſame, and puniſh the offender, by commitment* (L) *to the houſe of correction, there to remain and be corrected, and held to hard labour for a reaſonable time, not exceeding one kalendar month, or otherwiſe by diſcharging* (M) *ſuch apprentice.* ſ. 4.

Perſons aggrieved by any determination, order or warrant of ſuch juſtices (except any order of commitment) may appeal to the next ſeſſions; who may award coſts to either party not exceeding 40 *s.* to be levied by diſtreſs and ſale. *ſ.* 5.

And no *certiorari* ſhall iſſue to remove any the ſaid proceedings. *ſ.* 6.

5. If any apprentice of huſbandry, or of any art or occupation aforeſaid, ſhall flee into any other ſhire, the juſtices, mayors or other head officers being juſtices, may iſſue writs of *capias* to the ſheriffs of the counties or other head officers of the places whither he ſhall ſo flee, to take his body, returnable before them at what time ſhall pleaſe them; ſo that if he come by ſuch proceſs, he may be put in priſon, till he find ſufficient ſurety well and honeſtly to ſerve his maſter. 5 *El.* *c.* 4. *ſ.* 47. Apprentice fleeing into another ſhire.

And by the act of 24 G. 2. *c.* 55. If a juſtice ſhall iſſue a warrant againſt ſuch perſon, and he ſhall eſcape into another ſhire; the conſtable or other perſon, on having the warrant indorſed by a juſtice in ſuch other ſhire, may arreſt him there, and carry him before a juſtice in ſuch other ſhire, if the offence is bailable, to find bail, or elſe ſhall carry him back before a juſtice in the ſhire from whence the warrant did firſt iſſue.

VIII. Apprentice ſtealing his maſter's goods.

By the 21 *H.* 8. *c.* 7. Servants going away with their maſters goods, with intent to ſteal them, ſhall be guilty of felony; but not to extend to apprentices.

And by 12 *An. ſt.* 1. *c.* 7. Perſons ſtealing to the value of 40*s.* being in a dwelling houſe or outhouſe thereto belonging, tho' ſuch houſe be not broken, and tho' no perſon be therein, ſhall be guilty of felony without benefit of clergy. But this not to extend to apprentices under fifteen years of age.

But if they be fifteen years of age, they ſhall be guilty as other perſons.

IX. Aſſigning apprentices.

The maſter aſſigning, and the apprentice himſelf conſenting, will not make him an apprentice to the aſſignee within the fifth of *El.* But by the cuſtom of *London*, he may be turned over to another. *Dalt. c.* 58.

And an aſſignment to the ſea ſervice is good by act of parliament, as is before mentioned.

E. 3 *G. K.* and *Barnes.* Order returned on a *certiorari:* It is reſolved by the juſtices at the ſeſſions, where a perſon was bound an apprentice to *Barnes* by the pariſh officers, and *Barnes* had aſſigned him to another, that the aſſignment is void, and they direct *Barnes* to take his apprentice again. But by the court; The ſeſſions had no power to judge of the validity of a deed, or to hinder a man from aſſigning his apprentice. The covenant to provide for him is well performed, if the perſon to whom he is bound aſſigns him to another to provide for him. Wherefore the order was quaſhed. *Foley* 155. *Strange* 48.

For the juriſdiction of the juſtices extends no farther, than to compel the maſter to take care of his apprentice; but in what manner he does it, whether in his own houſe or otherwiſe, is nothing to them. But if the aſſignee of the apprentice doth not provide for him, the firſt maſter may be compelled to do it, and he may take his remedy over. *Seſſ. C. V.* 1. 110.

X. Maſter dying.

It hath been ſaid, that if the maſter dies, the apprentice goes to the executor or adminiſtrator to be maintained, if there are aſſets; but the executor or adminiſtrator may bind him to another maſter, for the remaining part of his time.

And in *M.* 10 *W. K.* and *Peck. Eyre* J. held, that an apprenticeſhip is a perſonal truſt between the maſter and ſervant, and determines by the death of either of them; and by the death of either of them, the end and deſign of the apprenticeſhip cannot be obtained, and it may be the executor is of another trade; he admitted, covenant would lie againſt the executor, but in that there is no inconvenience, becauſe the executor may make his defence

fence by pleading no aſſets, or debts of a higher nature. *Holt* Ch. J. ſaid, that by the cuſtom of *London*, the executor ſhall put the apprentice to another maſter of the ſame trade; and that in other places, it would be very hard to conſtrue the death of the maſter to be a diſcharge of the covenants; he ſaid, it had been held, that the covenant for inſtruction failed, but that he ſtill continues an apprentice with the executor, as to maintenance. 1 *Salk.* 66.

E. 20 *G.* 2. *Baxter* (widow and executrix) and *Burfield.* In debt on bond, conditioned for *Matthias Anderſon*'s performance of the covenants in an indenture of apprenticeſhip, whereby he was bound to the plaintiff's teſtator, who was a mariner: the defendant pleaded, that *Anderſon* ſerved faithfully to the death of the teſtator: the plaintiff replied, that ſince the death of the teſtator, *Anderſon* had abſented from her ſervice: to which there was a demurrer. And after argument at bar, *Lee* Ch. J. delivered the reſolution of the court, *viz.* That they were all of opinion, the defendant ſhould have judgment, and that the executrix could maintain no ſuch action. The binding was to the *man*, to learn *his* art, and ſerve *him*, without any mention of executors. And as the words are confined, ſo is the nature of the contract; for it is fiduciary, and the apprentice is bound from a perſonal knowledge of the integrity and ability of the maſter. *H.* 8 *An. Horne* and *Blake*; An award that an apprentice ſhould be aſſigned, was held void; unleſs there was a cuſtom, or the concurrence of the apprentice. And they held, it was not material, that according to *Cro. Eliz.* 553. the aſſets were liable on the maſter's covenant to maintain. Therefore judgment was given for the defendant. *Strange* 1266.

Note, the words in *Cro. Eliz.* 553. are theſe: A covenant lies againſt an executor in every caſe, altho' he be not named; unleſs it be ſuch a covenant as is to be performed by the perſon of the teſtator, which they cannot perform.

But in the caſe of *K.* and *Eaſt-Bridgeford*, *T.* 12 *G.* 2. Upon a ſpecial order it was ſtated, that an apprentice upon the death of his maſter, was with his own conſent turned over by the widow (who had taken no adminiſtration) to another maſter whom he ſerved. And the court held it a good ſettlement in the laſt pariſh, within the reaſon of thoſe caſes, where an apprentice was bound to a perſon in one pariſh, but with the maſter's conſent ſerved with another perſon in another pariſh, and there gained a ſettlement. *Strange* 1155.

XI. Apprentices ſetting up their trades.

By the common law, no man may be prohibited to work in any lawful trade, or in more trades than one, at his pleaſure. 11 *Co.* 53.

So that without an act of parliament no man may be reſtrained, either to work in any lawful trade, or to uſe divers miſteries or trades; therefore an act of parliament made to reſtrain any perſon herein,

herein, must be taken strictly, and not favourably as acts made in affirmance of the common law.

The restraining clause in the statute of 5 *El. c.* 4. is as follows; *It shall not be lawful to any person, to set up, occupy, use, or exercise, any craft, mistery, or occupation now used or occupied within the realm of* England *or* Wales, *except he shall have been brought up therein seven years at the least as an apprentice by this statute, nor to set any person on work therein, except he shall have been apprentice as aforesaid, or else having served . an apprentice will become a journeyman, or hired by the year; on pain of* 40 s. *a month, half to the king, and half to him that shall sue in the sessions, or other court of record; or if it is in a town corporate, then to be disposed of as other fines by the charter.* s. 31.

It shall not be lawful] This is a negative clause, and no one shall exercise a trade against it, unless by virtue of a custom, as the widows of tradesmen, who by custom carry on the trade of their husbands, which the court held not to be within this statute. 2 *Salk.* 610.

To any person] But by the 15 *C.* 2. *c.* 15. Hemp workers of all kinds, net makers, and makers of tapestry hangings are excepted; who may set up without having served seven years.

And by 22 *G.* 2. *c.* 44. All officers, mariners, and soldiers, who have been employed in his majesty's service, and not deserted, may exercise such trades as they are apt for, in any town or place.

And by 6 & 7 *W. c.* 18. An apprentice discovering two offenders guilty of coining, so as they be convicted, shall be deemed a freeman, and may exercise his trade as if he had served out his time. *s.* 12.

To set up, occupy, use, or exercise] *T.* 3 *W. Hobbs* and *Young.* Exercising a trade by others who have served seven years is within the statute; for he that hath not served an apprenticeship is thereby restrained to work as a trader, either by himself or others; for the intent of the act is, to annex the benefit of trade to such as underwent the hardship of learning it, thereby to encourage labour in youth: And few would undergo the trouble of being apprentices, if they might employ others to work for them. 2 *Salk.* 610.

If a man use the trade of a tallow chandler, baker, brewer, or any other lawful trade, or manual occupation, for his own use, or for the use of his family, without selling any for lucre and gain, he may lawfully do it; but he cannot retain any apprentice therein; but he may hire one to be his servant, who is skilful in that trade or occupation. 8 *Co.* 129.

Now used] That is, on the 12th of *Jan.* 1562, when that parliament began; and this restraint shall not extend any further, than the words do expressly direct, and therefore not to new arts and misteries since invented. 1 *Roll's Rep.* 10. 1 *Ventr.* 326, 346.

Within

Within the realm of England *and* Wales] *M.* 1 *G.* 2. *K.* and *Liſter.* Indictment for uſing the trade of a dry ſalter, being a craft, miſtery, or occupation uſed *in this kingdom* on the 12th day of *Jan.* in the 5th year of *Eliz.* Which the court held to be ill; for that the words *in this kingdom* tie down the indictment to the kingdom of *Great Britain*, as it is at this day; whereas it ſhould have been *in England*, or *in England and Wales.* Self C. V. 2. 160. Strange 788.

Except he ſhall have been brought up therein ſeven years] *E.* 11 *W.* *K.* and *Fox.* Indictment for uſing the trade of a taylor, not having ſerved ſeven years, was quaſhed, becauſe it ſaid only, not having ſerved as an apprentice within *England* or *Wales*; for it may be he did ſo beyond ſea, and if it were any where it ſufficeth. 1 *Salk.* 67.

As an apprentice] *E.* 5 *An.* *Q.* and *Maddox.* By the court; Upon indictment on this ſtatute, in evidence we allow following the trade for ſeven years to be ſufficient, without any binding, this being an hard law. 2 *Salk.* 613.

Or elſe having ſerved as an apprentice, will become a journeyman] *M.* 26 *C.* 2. *K.* and *Moor.* The defendant was indicted for uſing the trade of a weaver, not having ſerved as an apprentice ſeven years; the evidence was, he ſerved ſix as an apprentice, and had ſince as journeyman in the ſame trade worked above that time: And by the court, the ſerving of ſeven years is ſufficient either way; and the defendant was found not guilty. 3 *Keb.* 400.

A. Indenture of a pariſh apprentice; on 43 *El.* *c.* 2. *ſ.* 1, 5.

THIS *indenture made the* ——— *day of* ——— *in the year of our lord* ——— *Between* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overſeers of the poor of the pariſh of* ——— *in the county of* ——— *of the one part, and* A. M. *of* ——— *in the ſaid pariſh, ſhoemaker, of the other part, witneſſeth, that the ſaid churchwardens and overſeers of the poor, by and with the conſent of* ——— *two of his majeſty's juſtices of the peace for the ſaid county, dwelling near to* [or, *in*] *the ſaid pariſh of* ——— *one whereof is of the* quorum, *have by theſe preſents put, placed, and bound* A. P. *a poor boy, whoſe parents* B. P. *and* C. P. *are not able to maintain him, of the age of* ——— *years, to be an apprentice with him the ſaid* A. M. *and as an apprentice with him the ſaid* A. M. *to dwell, from the date of theſe preſents, until the ſaid* A. P. *ſhall come to the age of twenty-four years* [or, if a female, *until the ſaid* A. P. *ſhall come to the age of twenty-one years, or the time of her marriage, which ſhall firſt happen*] *according to the ſtatutes in ſuch caſe made and provided. By and during all which time and term, the ſaid* A. P. *ſhall the ſaid* A. M. *his ſaid maſter well and faithfully ſerve, in all ſuch lawful buſineſs as the ſaid* A. P. *ſhall be put*

put unto by the command of his ſaid maſter, according to the power, wit, and ability of him the ſaid A. P. *and honeſtly and obediently in all things ſhall behave himſelf towards his ſaid maſter, and honeſtly and orderly towards the reſt of the family of the ſaid* A. M. *And the ſaid* A. M. *for his part, for himſelf, his executors and adminiſtrators, doth hereby promiſe and covenant, to and with the ſaid churchwardens and overſeers of the poor, for them and their ſucceſſors, and for the ſaid* A. P. *that he the ſaid* A. M. *ſhall the ſaid* A. P. *in the craft, miſtery, and occupation of a ſhoemaker, which he the ſaid* A. M. *now uſeth, after the beſt manner that he can or may, teach, inſtruct, and inform, or cauſe to be taught, inſtructed, and informed, as much as thereunto belongeth, or in any wiſe appertaineth; And that the ſaid* A. M. *ſhall alſo during all the ſaid term find and allow unto the ſaid apprentice ſufficient meat, drink, apparel, waſhing, lodging, and all other things needful or meet for an apprentice, in ſuch manner that the ſaid apprentice ſhall not at any time during the ſaid term, be in any wiſe a charge to the ſaid pariſh or the pariſhioners thereof. In witneſs whereof the ſaid parties have hereunto ſet their hands and ſeals, the day and year firſt above written.*

Where the overſeers and the maſter can agree, other covenants may be inſerted, according to ſuch agreement; but if the maſter is to be compelled, it ſeemeth not ſafe to require more from him by the indenture than is above expreſſed.

The aſſent of two juſtices.

WE ——— *two of his majeſty's juſtices of the peace for the abovementioned county of* ——— *dwelling near to the abovementioned pariſh of* ——— *and one of us of the* quorum, *do hereby declare our aſſent to the binding the abovenamed* A. P. *an apprentice to the abovenamed* A. M. *according to the form and effect of the abovewritten indenture. Given under our hands the* ——— *day of* &c.

B. Warrant to levy 10*l.* for not receiving a poor apprentice; on the ſtatute of 8 & 9 *W.*

Weſtmorland { To the conſtables of ———

WHEREAS A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overſeers of the poor of the pariſh of* ——— *in the ſaid county, by the aſſent of* [*us*] ——— *two of his majeſty's juſtices of the peace for the ſaid county, dwelling near to* [or, *in*] *the ſaid pariſh of* ——— *one whereof is of the* quorum, *did endeavour to bind* A. P. *a poor male child of the ſaid pariſh, whoſe parents*

parents are not able to maintain him, apprentice to A. M. *of* ——— *in the ſaid pariſh, taylor, and for that intent did prepare and duly perfect one pair of indentures purſuant to the ſtatute in ſuch caſe made and provided, which ſaid pair of indentures was ſigned and confirmed by* [*us*] *the ſaid two juſtices: And whereas it hath been duly proved before us, as well upon the oath of the ſaid* A. B. *as otherwiſe, that the ſaid* A. M. *hath refuſed, and doth refuſe, to receive and provide for the ſaid* A. P. *as an apprentice, and alſo to execute another part of the ſaid indentures, being duly tendred to him by the ſaid churchwardens and overſeers of the poor, whereby the ſaid* A. M. *hath forfeited the ſum of ten pounds: Theſe are therefore, in his ſaid majeſty's name, to require and command you, to make diſtreſs of the goods and chattels of him the ſaid* A. M. *and if within the ſpace of* [*ſix*] *days next after ſuch diſtreſs by you made, the ſaid ſum of* 10 l. *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, pay the ſaid ſum of* 10 l. *to the overſeers of the poor of the ſaid pariſh of* ——— *where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; returning the overplus upon demand unto him the ſaid* A. M. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being thereout firſt deducted. Provided always, that if the ſaid* A. M. *ſhall think himſelf aggrieved with this our adjudication, award, and warrant, and ſhall appeal therefrom to the next general or quarter ſeſſions of the peace for the ſaid county, that then you ſuſpend and forbear the ſale of ſuch diſtreſs till further order ſhall be made in the premiſſes upon the appeal of the ſaid* A. M. *to the ſaid ſeſſions of the peace. Given under our hands and ſeals the* ——— *day of* &c.

C. Warrant againſt the maſter for miſuſing his apprentice; on 5 *El. c.* 4.

Weſtmorland. { To the conſtables of ———.

WHEREAS *complaint hath been duly made unto me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, by* A. P. *apprentice to* A. M. *of* ——— *in the ſaid county, ſhoemaker, that the ſaid* A. M. *hath miſuſed and evil intreated him the ſaid* A. P. *by cruel puniſhment, and beating him the ſaid* A. P. *without juſt cauſe, and by not allowing unto him ſufficient meat, drink, apparel,* [or as the caſe ſhall be] *Theſe are therefore in his majeſty's name to command you to cauſe the ſaid* A. M. *perſonally to appear before me at the houſe of* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the afternoon of the ſame day, to anſwer unto the ſaid complaint; and alſo to cauſe the ſaid apprentice to appear before me at the ſame time and place, to make good his ſaid complaint. Herein fail not. Given under my hand and ſeal the* ——— *day of* &c.

D. Warrant

D. Warrant againſt the apprentice, on complaint of the maſter; on the 5 *El. c.* 4.

Weſtmorland. { To the conſtables of ———.

WHEREAS *complaint hath been duly made unto me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, by* A. M. *of* ——— *in the ſaid county, huſbandman, that* A. P. *now being an apprentice to him the ſaid* A. M. *is negligent, ſtubborn, diſorderly, and doth not his duty to him the ſaid* A. M. *his maſter; Theſe are therefore to command you to bring the ſaid apprentice before me, and to give notice to the ſaid maſter that he appear before me at the ſame time, that ſuch order may be taken in the premiſſes, as equity ſhall require. Herein fail not. Given under my hand and ſeal the* ——— *day of* &c.

E. Order of diſcharge by four juſtices at the ſeſſions; on the 5 *El. c.* 4. *ſ.* 35.

Weſtmorland. AT *a general quarter ſeſſions of the peace, holden at* ——— *in and for the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of our lord* George *the ſecond, by the grace of god of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth; Before* ——— *juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and of the* quorum, *It is ordered as followeth;*

Upon the petition of A. P. *apprentice to* A. M. *of* ——— *in the ſaid county, huſbandman, to be relieved upon certain neglects of the ſaid maſter in inſtructing him in his trade, and in miſuſing and evil intreating the ſaid apprentice by cruel puniſhment* [or as the caſe ſhall be]; *And the ſaid maſter having likewiſe appeared upon his recognizance taken before* J. P. *eſquire, one of the ſaid juſtices, to anſwer to the complaint of the ſaid petition, and having proved nothing whereby to clear himſelf of the ſaid complaint; but on the contrary, the ſaid* A. P. *having given full proof of the truth of the ſaid complaint to the ſatisfaction of the ſaid court: We therefore, whoſe hands and ſeals are hereunto ſet, being four of the ſaid juſtices, and of the* quorum, *do hereby order, pronounce, and declare, that the ſaid apprentice ſhall be, and is hereby diſcharged and freed from his ſaid apprenticeſhip; and that the ſaid maſter ſhall pay and reſtore to the ſaid apprentice the ſum of* ——— *being part of the ſum of* ——— *which he the ſaid maſter had with the ſaid apprentice upon his binding: And this to be a final order betwixt the ſaid maſter and apprentice, any thing contained in their indentures of apprenticeſhip, or otherwiſe, to the contrary notwithſtanding. Given under our hands and ſeals the day and year firſt above written.*

F. Complaint

F. Complaint of an apprentice to two juſtices againſt his maſter; on 20 *G.* 2. *c.* 19.

Weſtmorland. THE *information and complaint of* A. P. *apprentice to* A. M. *of* ——— *in the ſaid county, huſbandman, taken and made* [*on oath*, if he is above 14 years of age] *before us two of his majeſty's juſtices of the peace in and for the ſaid county, the* ——— *day of* ——— *in the year* &c.

Who ſaith, that he the ſaid A. P. *about a year and a half ago laſt paſt, became bound an apprentice by indenture to* A. M. *of* ——— *aforeſaid, huſbandman; that at ſeveral times, ſince he entred upon the ſaid apprenticeſhip, the ſaid* A. M. *hath miſuſed and ill treated him the ſaid apprentice, and particularly* [as the caſe ſhall be].

A † P
his mark.

Taken and ſigned the day and year above; before us

J. P.
K. P.

G. Summons of the maſter by two juſtices, on complaint of the apprentice; on the 20 *G.* 2. *c.* 19. *ſ.* 3.

Weſtmorland. { To the conſtable of ———.

WHEREAS *complaint hath been made unto us* ——— *two of his majeſty's juſtices of the peace in and for the ſaid county, by* A. P. *apprentice to* A. M. *of* ——— *in the ſaid county, huſbandman, that he the ſaid* A. M. *hath miſuſed and ill treated him the ſaid* A. P. *and particularly* [as the caſe ſhall be]: *Theſe are therefore to require you to ſummon the ſaid* A. M. *to appear before us at* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *to anſwer unto the ſaid complaint; and alſo that you give notice unto him, to bring with him the indenture of apprenticeſhip between him and his ſaid apprentice; and alſo that you bring before us at the ſame time and place the ſaid* A. P. *to make good the ſaid complaint; and alſo that you bring with you this precept, and certify unto us then and there what you ſhall have done in the execution thereof. Given under our hands and ſeals the* ——— *day* &c.

H. Diſcharge of an apprentice by two juſtices, on the maſter's miſuſing him; by the 20 G. 2. c. 19. ſ. 3.

Weſtmorland. WHEREAS *complaint hath been made before us* ——— *two of his majeſty's juſtices of the peace in and for the ſaid county, by* A. P. *apprentice to* A. M. *of* ——— *in the ſaid county, taylor, that he the ſaid* A. M. *hath miſuſed and ill treated him the ſaid apprentice* [*and particularly*, as the caſe ſhall be]; *And whereas the ſaid* A. M. *hath appeared before us in purſuance of our ſummons to that purpoſe, but hath not cleared himſelf of and from the ſaid accuſation and complaint, but on the contrary the ſaid* A. P. *hath made full proof of the truth thereof before us upon oath; We therefore by theſe preſents do diſcharge him the ſaid* A. P. *of and from his apprenticeſhip to the ſaid* A. M. *any thing in the indenture of apprenticeſhip made betwixt them, or otherwiſe howſoever, to the contrary notwithſtanding. Given under our hands and ſeals the* ——— *day of* &c.

[Or, *And whereas it hath been duly proved before us, as well upon the oath of* A. C. *conſtable of* ——— *aforeſaid, as otherwiſe, that he the ſaid* A. C. *did duly ſummon the ſaid* A. M. *to appear before us at a reaſonable time in the ſaid ſummons mentioned and ſpecified; but notwithſtanding the ſame, he the ſaid* A. M. *hath not appeared before us according to ſuch ſummons: We therefore, having duly examined into the matter of the ſaid complaint, and the truth thereof having been fully proved before us upon oath, do diſcharge* &c.]

I. Complaint to two juſtices of the maſter againſt his apprentice; on the 20 G. 2. c. 19. ſ. 4.

Weſtmorland. THE *complaint and information of* A. M. *of* ——— *in the ſaid county, huſbandman, taken on oath before us* ——— *two of his majeſty's juſtices of the peace in and for the ſaid county, the* ——— *day of* ———.

Who ſaith, that A. P. *having been bound to him an apprentice by indenture bearing date the* ——— *day* &c. *and having entred upon his apprenticeſhip accordingly, hath been refractory and diſobedient to him the ſaid* A. M. [and particularly as the caſe ſhall be.]

Taken the day and year above, before us — A. M.

J. P.
K. P.

K. Warrant for a diſorderly apprentice, by two juſtices; on the 20 G. 2. c. 19. ſ. 4.

Weſtmorland. { To the conſtable of ———.

WHEREAS *oath hath been made before us* ——— *two of his majeſty's juſtices of the peace in and for the ſaid county, by* A. M. *of* ——— *in the ſaid county, huſbandman, that* A. P. *apprentice to the ſaid* A. M. *hath committed divers miſdemeanors againſt the ſaid* A. M. *his maſter, and hath likewiſe run away from his ſaid maſter; Theſe are therefore to require you forthwith to apprehend the ſaid* A. P. *and bring him before us, to anſwer unto the ſaid complaint, and to be dealt with according to law: And you are to give notice to the ſaid* A. M. *that he appear before us at the ſame time, to make good the ſaid complaint. Given under our hands and ſeals* &c.

L. Commitment of an apprentice to the houſe of correction, on complaint of his maſter, by two juſtices; on the 20 G. 2. c. 19. ſ. 4.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS *complaint hath been made before us* ——— *two of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. M. *of* ——— *in the ſaid county, huſbandman, that* A. P. *apprentice of the ſaid* A. M. *hath committed divers miſdemeanors againſt him the ſaid* A. M. *his maſter; And whereas upon examination thereof, and upon hearing the allegations of both parties having come before us for that purpoſe, and upon due conſideration had thereof, we have adjudged, and do hereby adjudge the ſaid complaint to be true: We do therefore hereby command you the ſaid conſtable, to take and convey the ſaid* A. P. *to the ſaid houſe of correction, and to deliver him to the ſaid keeper thereof, together with this warrant: And we do hereby command you the ſaid keeper of the ſaid houſe of correction, to receive the ſaid* A. P. *into your cuſtody in the ſaid houſe of correction, there to remain and be corrected, and held to hard labour for the ſpace of* ——— *from the date hereof. Given under our hands and ſeals the* ——— *day* &c.

M. Diſcharge of an apprentice by two juſtices, on complaint of the maſter; by 20 *G.* 2. *c.* 19. *ſ.* 4.

Weſtmorland. WHEREAS *complaint* &c. (as in the laſt precedent) — *We do therefore by theſe preſents diſcharge the ſaid* A. P. *from his apprenticeſhip to the ſaid* A. M. *any thing in any indenture or indentures of apprenticeſhip betwixt them, or otherwiſe, to the contrary notwithſtanding. Given* &c.

Approver.

AN *approver* (probator) is a perſon indicted of treaſon or felony, and in priſon for the ſame, who upon his arraignment, before any plea pleaded, doth confeſs the indictment, and takes a corporal oath to reveal all treaſons and felonies that he knoweth of, and therefore prays a coroner, before whom he is to enter his appeal or accuſation, againſt thoſe that are partners in the crime contained in the indictment, 3 *Inſt.* 129.

This accuſation of himſelf, and oath, makes his accuſation of another perſon of the ſame crime to amount to an indictment; and if his partners are convicted, he ſhall have his pardon of courſe. 3 *Inſt.* 129, 130.

But juſtices of the peace cannot take cognizance hereof, becauſe they have no authority by their commiſſion to aſſign a coroner. 3 *Inſt.* 130.

And beſides, as it is in the diſcretion of the court, whether they will ſuffer one to be an approver, this method of late hath been ſeldom practiſed: And in many caſes we have what ſeems to amount to the ſame, by ſtatute; where pardon is aſſured to offenders, on diſcovering and convicting their accomplices.

Aqua Vitae. See Exciſe.
Arbitration. See Award.
Armour embezilling. See Stores.
Armour popiſh. See Popery.
Armour ſeizing. See Affray.
Army. See Soldiers and Militia.
Arrack. See Exciſe.

Arraignment.

WHEN an offender comes into court, or is brought in by proceſs, ſometimes of *capias*, and ſometimes of *habeas corpus* directed to the gaoler of another priſon; the firſt thing that follows thereupon, is his arraignment. 2 *H. H.* 216.

Now arraignment is nothing elſe but the calling of the offender to the bar of the court, to anſwer the matter charged upon him. 2 *H. H.* 216.

And the word in latin is no other than *ad rationem ponere*, and in french *ad reſon*, or abbreviated *a reſn*; for as the ancient word *diſrain* or *derayn* imports in latin *diſrationare*, to diſprove or evince the contrary of any thing that is or may be affirmed, ſo *arraigne* is *ad rationem ponere*, to call to account or anſwer. 2 *H. H.* 216.

The priſoner on his arraignment, tho' under an indictment of the higheſt crime, muſt be brought to the bar without irons and all manner of ſhackles or bonds, unleſs there be a danger of eſcape, and then he may be brought with irons. 2 *H. H.* 219.

Alſo there is no neceſſity that a priſoner, at the time of his arraignment, hold up his hand at the bar, or be commanded ſo to do; for this is only a ceremony for making known the perſon of the offender to the court; and if he anſwers that he is the ſame perſon, it is all one. 2 *Haw.* 308.

Arreſt.

THIS is to be underſtood of arreſts in criminal caſes only, and not in civil caſes.

The word *arreſt* is the ſame, with very little variation, in the *Engliſh*, *French*, *German*, *Belgick*, and other languages of the weſtern empire, heretofore ſubject to the *Roman* power; and probably may have been derived unto us through the channels both of *France* and *Saxony*: the *French arreſter* ſignifieth to ſtop or ſtay; and the *Saxon reſtan*, to reſt; and both perhaps have ſprung from the *Italian arreſto*, and that from the well known *Latin* verb *ſto*, to ſtand. Arreſt, what.

And, in law, an arreſt doth ſignify the reſtraint of a man's perſon, depriving him of his own will and liberty, and binding him to become obedient to the will of the law: And it may be called the beginning of impriſonment. *Lamb.* 93.

Concerning which I will ſhew,

I. Who may or may not be arreſted.

II. For what cauſes of ſuſpicion an arreſt may be.

III. By whom the arreſt ſhall be made.
IV. The manner of an arreſt.
V. What is to be done after the arreſt.

I. Who may or may not be arreſted.

Privilege of parliament.

1. Generally, a member of parliament ſhall have the privilege of parliament for himſelf and his ſervants to be freed from arreſts: but for treaſon, felony, and breach of the peace there can be no privilege. 4 *Inſt.* 24, 25.

Peers and bodies corporate.

2. In caſes of peers and corporations, the proceſs is a *diſtringas*, for they cannot be arreſted. 3 *Salk.* 46.

In churchyards.

3. None ſhall arreſt prieſts or their clerks, or other perſons of holy church, whilſt they attend to divine ſervice, in churches, churchyards, or other places dedicated to god; on pain of impriſonment and ranſom at the king's will, and he ſhall alſo make gree to the parties arreſted. 50 *Ed.* 3. *c.* 5. 2 *R.* 2. *c.* 15.

On Sundays.

4. Alſo a warrant executed againſt any perſon whatſoever, on the lord's day, is void; and the perſons ſerving the ſame ſhall ſuffer damages, as if they had done the ſame without warrant, except in caſes of treaſon, felony, and breach of the peace. 29 *C.* 2. *c.* 7. *ſ.* 6.

II. For what cauſes of ſuſpicion an arreſt may be.

Suſpicion.

By the ſtatute of 34 *Ed.* 3. *c.* 1. Power is given to the juſtices of the peace, to arreſt all thoſe, whom they find by indictment, or by *ſuſpicion*, and to put them in priſon.

Cauſes of ſuſpicion:

And the cauſes of ſuſpicion, which are generally agreed to juſtify the arreſt of an innocent perſon for felony, are theſe that follow;

Common fame.

(1) The common fame of the country; but it ſeems, that it ought to appear upon evidence, in an action brought for ſuch arreſt, that ſuch fame had ſome probable ground. 2 *Haw.* 76.

Circumſtances of guilt.

(2) The being found in ſuch circumſtances, as induce a ſtrong preſumption of guilt; as coming out of a houſe wherein murder hath been committed, with a bloody knife in one's hand; or being found in poſſeſſion of any part of goods ſtolen, without being able to give a probable account of coming honeſtly by them. 2 *Haw.* 76.

Flight.

(3) The behaving one's ſelf in ſuch a manner as betrays a conſciouſneſs of guilt; as where a man accuſed of felony, on hearing that a warrant is taken out againſt him, doth abſcond. 2 *Haw.* 76.

But the party who flies from an arreſt for a capital offence, is not thereby guilty of a capital offence, but only liable to forfeit his goods, when ſuch flight is found againſt him. 2 *Haw.* 122.

Evil company.

(4) The being found in company with one known to be an offender, at the time of the offence; or generally at other times keeping

keeping company with perſons of ſcandalous reputation. 2 *Haw.* 76. 2 *Inſt.* 52.

(5) The living an idle, vagrant, and diſorderly life, without having any viſible means to ſupport it. 2 *Haw.* 76. Living idle.

(6) The being purſued by hue and cry. 2 *Haw.* 76. Hue and cry.

For if a felony is done, and one is purſued upon hue and cry, that is not of ill fame, ſuſpicious, unknown, nor indicted; he may be attached and impriſoned by the law of the land. 2 *Inſt.* 52.

But generally, no ſuch cauſe of ſuſpicion, as any of the above-mentioned, will juſtify an arreſt, where in truth no ſuch crime hath been committed; unleſs it be in the caſe of hue and cry. 2 *Haw.* 76. Where no crime is committed.

III. By whom the arreſt ſhall be made.

1. In criminal caſes, a perſon may be apprehended and reſtrained of his liberty, not only by proceſs out of ſome court, or warrant from a magiſtrate, but frequently by a conſtable, watchman, or private perſon, without any warrant or precept. Arreſt without warrant:

2. Thus all perſons, who are preſent when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, on pain of being fined and impriſoned for their neglect. 2 *Haw.* 74. By private perſons.

Alſo, every private perſon is bound to aſſiſt an officer demanding his help, for the taking of a felon, or the ſuppreſſing of an affray. 2 *Haw.* 75.

Alſo by the vagrant act of 17 *G.* 2. Every private perſon may apprehend beggars and vagrants.

3. Alſo, a watchman may arreſt a night-walker, without any warrant from a magiſtrate. 2 *Inſt.* 52. By watchmen.

4. In like manner, a conſtable may *ex officio* arreſt a breaker of the peace in his view, and keep him in his houſe, or in the ſtocks, till he can bring him before a juſtice. 1 *H. H.* 587. By conſtables.

5. Or any perſon whatſoever, if an affray be made to the breach of the king's peace, may without any warrant from a magiſtrate, reſtrain any of the offenders, to the end the king's peace may be kept; but after the affray is ended, they cannot be arreſted without an expreſs warrant. 2 *Inſt.* 52. By any perſon whatſoever.

6. So much concerning an arreſt without a warrant; next follows arreſting with ſuch warrant. Arreſt with warrant:

7. The warrant is ordinarily directed to the ſheriff or conſtable, and they are indictable, and ſubject thereupon to a fine and impriſonment, if they neglect or refuſe it. 1 *H. H.* 581. By the ſheriff or conſtable.

8. If it be directed to the ſheriff, he may command his bailiff, under-ſheriff, or other ſworn and known officer, to ſerve it, without writing any precept. But if he will command another man, that is no ſuch officer, to ſerve it, he muſt give him a written precept, otherwiſe, falſe impriſonment will lie. *Lamb.* 89. Sheriff may depute.

9. But every other perſon, to whom it is directed, muſt perſonally execute it; yet it ſeems, that any one may lawfully aſſiſt him. 2 *Haw.* 86. Others cannot depute.

Where a conſtable may execute it out of his own diſtrict.

10. If a warrant be generally directed to all conſtables, no one can execute it out of his own precinct; for in ſuch caſe it ſhall be taken reſpectively to each of them within their ſeveral diſtricts, and not to one of them to execute it within the diſtrict of another: but if it be directed to a particular conſtable (Mr. *Hawkins* ſays, to a particular conſtable *by name*), he may execute it any where within the juriſdiction of the juſtice, but is not compellable to execute it out of his own conſtablewick. Lord *Raym.* 546. 1 *H. H.* 581. 2 *H. H.* 110. 2 *Haw.* 86.

Any perſon may execute.

11. The juſtice that iſſues the warrant, may direct it to a private perſon if he pleaſeth, and it is good; but he is not compellable to execute it, unleſs he be a proper officer. 1 *H. H.* 581.

But not to be directed to the party.

12. But by the juſtices oath, the warrant ought not to be directed to the party, but to ſome indifferent perſon, to execute it.

Where directed to two jointly.

13. If a warrant is directed to two or more jointly, yet any one of them alone may execute it. *Dalt. c.* 169.

IV. The manner of an arreſt.

To be gone about immediately.

1. The officer to whom a warrant is directed and delivered, ought with all ſpeed and ſecrecy to find out the party, and then to execute the warrant. *Dalt. c.* 169.

Oppoſing the execution.

2. It is certainly an offence of a very high nature, to oppoſe one who lawfully endeavours to arreſt another for treaſon or felony: And it ſeems, that the perſon who ſo oppoſes an arreſt for treaſon, whereof he knows the party to have been guilty, is thereby guilty of the treaſon; and that he who ſo oppoſes an arreſt for felony, is an acceſſary to the felony. 2 *Haw.* 121.

Arreſting in the night.

3. An arreſt in the night is good, both at the ſuit of the king and of the ſubject; elſe the party may eſcape. 9 *Co.* 66.

Arreſting in another county.

4. By the 24 *G.* 2. *c.* 55. Conſtables and others may, on having the warrant indorſed by a juſtice in another county, into which an offender ſhall have eſcaped, arreſt an offender in ſuch other county, and carry him before a juſtice in ſuch other county, if the offence is bailable, to find bail; or elſe ſhall carry him back again before a juſtice in the county from whence the warrant did firſt iſſue.

Taking the power of the county.

5. A private perſon cannot raiſe power to arreſt or detain a felon. 1 *H. H.* 601.

But any juſtice, or the ſheriff, may take of the county any number that he ſhall think meet, to purſue, arreſt, and impriſon traitors, murderers, robbers, and other felons; or ſuch as do break, or go about to break, or diſturb the king's peace: and every man being required, ought to aſſiſt and aid them, on pain of fine and impriſonment. *Dalt. c.* 171.

But it is not juſtifiable for a juſtice, ſheriff, or other officer, to aſſemble the *poſſe comitatus*, or raiſe a power or aſſembly of people, upon their own heads, without juſt cauſe. *Dalt. c.* 171.

But where a juſtice, ſheriff, or other officer, is enabled to take the power of the county, it ſeemeth they may command, and ought to have the aid and attendance of all knights, gentlemen, yeomen, huſbandmen, labourers, tradeſmen, ſervants, and apprentices,

tices, and of all other perſons being above the age of fifteen years, and able to travel. *Dalt. c.* 171. Becauſe, by the ſtatute of *Wincheſter*, all of that age are bound to have harneſs.

But women, eccleſiaſtical perſons, and ſuch as be decrepit, or diſeaſed, ſhall not be compelled to attend them. *Dalt. c.* 171.

And in ſuch caſe it is referred to the diſcretion of the juſtice, ſheriff, or other officer, what number they will have to attend on them, and how and after what manner they ſhall be armed or otherwiſe furniſhed. *Dalt. c.* 171.

Breaking open doors.

6. As to the caſe of breaking open doors, in order to apprehend offenders, it is to be obſerved, that the law doth never allow of ſuch extremities but in caſes of neceſſity; and therefore, that no one can juſtify the breaking open another's doors to make an arreſt, unleſs he firſt ſignify to thoſe in the houſe the cauſe of his coming, and requeſt them to give him admittance. 2 *Haw.* 86.

But where a perſon authorized to arreſt another, who is ſheltred in a houſe, is denied quietly to enter into it, in order to take him; it ſeems generally to be agreed, that he may juſtify breaking open the doors in the following inſtances:

(1) Upon a *capias* grounded on an indictment for any crime whatſoever; or upon any *capias* from the chancery or king's bench, to compel a man to find ſureties for the peace or good behaviour. 2 *Haw.* 86.

(2) Where one known to have committed a treaſon or felony, or to have given another a dangerous wound, is purſued either with or without a warrant, by a conſtable or private perſon; but where one lies under a probable ſuſpicion only, and is not indicted, it ſeems the better opinion at this day (Mr. *Hawkins* ſays) that no one can juſtify the breaking open doors in order to apprehend him: (And this opinion he founds on *Coke's* 4 *Inſt.* 177. and *Hale's pleas of the crown* 91.) 2 *Haw.* 87.

But Lord *Hale*, in his hiſtory of the pleas of the crown, ſays, that upon a warrant for probable cauſe of ſuſpicion of felony, the perſon to whom ſuch warrant is directed, may break open doors to take the perſon ſuſpected, if upon demand he will not ſurrender himſelf, as well as if there had been an expreſs and poſitive charge againſt him; and ſo (he ſays) hath the common practice obtained, notwithſtanding the contrary opinion of Lord *Coke:* for in ſuch caſe the proceſs is for the king, and therefore a *non omittas* is implied. 1 *H. H.* 580, 583. 2 *H. H.* 117.

And as he may break open ſuch perſon's own houſe, ſo much more may he break open the houſe of another to take him; for ſo the ſheriff may do upon a civil proceſs: But then he muſt at his peril ſee that the felon be there; for if the felon be not there, he is a treſpaſſer to the ſtranger whoſe houſe it is. 2 *H. H.* 117.

But it ſeems that he that arreſts as a *private man* barely upon ſuſpicion of felony, cannot juſtify the breaking open of doors to arreſt the party ſuſpected, but he doth it at his peril, that is, if in truth he be a felon, then it is juſtifiable, but if he be innocent, but upon a reaſonable cauſe ſuſpected, it is not juſtifiable. 1 *H. H.* 82.

But

But a *conſtable* in ſuch caſe may juſtify, and the reaſon of the difference is this: becauſe that in the former caſe it is but a thing permitted to private perſons to arreſt for ſuſpicion, and they are not puniſhable if they omit it, and therefore they cannot break open doors; but in caſe of a conſtable, he is puniſhable if he omit it upon complaint. 2 *H. H.* 92.

(3) Upon a warrant from a juſtice of the peace, to find ſureties for the peace or good behaviour. 2 *Haw.* 86. 1 *H. H.* 582. 2 *H. H.* 117.

And in general, Mr. *Dalton* ſays, an officer upon any warrant from a juſtice, either for the peace or good behaviour, or in any caſe where the king is a party, may by force break open a man's houſe, to arreſt the offender. *Dalt. c.* 169.

(4) On a warrant to ſearch for ſtolen goods, the doors may be broken open, if the goods are there; and if they are not there, the conſtable ſeems indemnified, but he that made the ſuggeſtion, is puniſhable. 2 *H. H.* 151.

(5) Where forcible entry or detainer is found by inquiſition before juſtices of the peace, or appears on their view. 2 *Haw.* 86.

(6) On a *capias utlagatum*, or *capias pro fine*. 2 *Haw.* 86.

(7) On the warrant of a juſtice of the peace for the levying of a forfeiture, in execution of a judgment, or conviction for it, grounded on any ſtatute, which gives the whole or any part of ſuch forfeiture to the king. 2 *Haw.* 86.

(8) Where an affray is made in an houſe, in the view or hearing of the conſtable, he may break open the doors to take them. 1 *Haw.* 137. 2 *Haw.* 87.

(9) If there be diſorderly drinking or noiſe in a houſe, at an unſeaſonable time of night, eſpecially in inns, taverns, or ale-houſes, the conſtable or his watch, demanding entrance, and being refuſed, may break open the doors, to ſee and ſuppreſs the diſorder. 2 *H. H.* 95.

(10) Wherever a perſon is lawfully arreſted for any cauſe, and afterwards eſcapes, and ſhelters himſelf in an houſe. 2 *Haw.* 87.

But upon a general warrant, without expreſſing any felony, or treaſon, or ſurety of the peace, the officer cannot break open a door. 1 *H. H.* 584.

Neither ought doors to be broken open to take a perſon, who is required to take certain oaths by virtue of a ſtatute, becauſe in ſuch caſe the warrant is not grounded on a precedent offence. 2 *Haw.* 87. 12 *Co.* 131.

But if an officer, to ſerve any warrant, enters into a houſe, the doors being open, and then the doors are locked upon him, he may break them open in order to regain his liberty. 2 *Haw.* 87.

Killing in the arreſt or purſuit.

7. If there be a warrant againſt a perſon, for a treſpaſs or breach of the peace, and he flies and will not yield to the arreſt, or being taken makes his eſcape; if the officer kills him, it is murder. 2 *H. H.* 117.

But if ſuch perſon, either upon the attempt to arreſt, or after the arreſt, aſſault the officer, to the intent to make his eſcape from him, and the officer ſtanding upon his guard, kills him, this is no felony;

felony; for he is not bound to go back to the wall, as in common caſes of *ſe defendendo*, for the law is his protection. 2 *H. H.* 118.

But where a warrant iſſueth againſt a perſon for felony, and either before arreſt, or after, he flies and defends himſelf with ſtones or weapons, ſo that the officer muſt give over his purſuit, or otherwiſe cannot take him without killing him, if he kill him it is no felony. And the ſame law is, for a conſtable that doth it by virtue of his office, or on hue and cry. 2 *H. H.* 118.

But then there muſt be theſe cautions: 1. He muſt be a lawful officer; or there muſt be a lawful warrant. 2. The party ought to have notice of the reaſon of the purſuit, namely, becauſe a warrant is againſt him. 3. It muſt be a caſe of neceſſity, and that not ſuch a neceſſity as in the former caſe, where an aſſault is made upon the officer; but this is the neceſſity, namely, that he cannot otherwiſe be taken. 2 *H. H.* 119.

But tho' a private perſon may arreſt a felon, and if he fly ſo as he cannot be taken without he be killed, it is excuſable in this caſe for the neceſſity; yet it is at his peril, that the party be a felon; for if he be innocent of the felony, the killing (at leaſt before the arreſt) ſeems at leaſt manſlaughter; for an innocent perſon is not bound to take notice of a private perſon's ſuſpicion. 2 *H. H.* 119.

Whether the conſtable need to ſhew his warrant.

8. A conſtable ſworn and commonly known, and acting within his own precinct, need not ſhew his warrant; but he ought to acquaint the party with the ſubſtance of it. 2 *Haw.* 85.

And an officer giveth ſufficient notice what he is, when he ſaith to the party, I arreſt you in the king's name; and in ſuch caſe, the party at his peril ought to obey him, tho' he knoweth him not to be an officer; and if he have no lawful warrant, the party grieved may have his action of falſe impriſonment. *Dalt. c.* 169.

But the learned editor of *Hale*'s hiſtory obſerves hereupon, that the books referred to do intend the general warrant conſtituting ſuch perſon an officer, as a bailiff, or the like, in a civil action; tho' it may be otherwiſe in caſe of felony, becauſe in ſuch caſe a private perſon may arreſt a felon without any warrant at all. 2 *H. H.* 116.

But if he acts out of his precinct, or is not ſworn and commonly known, he muſt ſhew his warrant if demanded. 2 *Haw.* 85, 86. Otherwiſe the party may make reſiſtance, and needs not to obey it. *Dalt. c.* 169.

But if the conſtable has no warrant, but doth it by virtue of his office, as conſtable, it is ſufficient to notify that he is conſtable, or that he arreſts in the king's name. 1 *H. H.* 583.

But in the caſe of a warrant of diſtreſs, iſſued by a juſtice of the peace, for the levying a pecuniary forfeiture or ſum of money, it is ſpecially provided by the ſtatute of the 27 *G.* 2. *c.* 20. that the officer executing the ſame, ſhall, if required, ſhew his warrant to the perſon whoſe goods are diſtrained, and ſhall ſuffer a copy thereof to be taken.

No arreſt by words.

9. If the conſtable come unto the party, and require him to go before the juſtice, this is no arreſt or impriſonment. *Dalt. c.* 170.

For bare words will not make an arreſt, without laying hold on the perſon. 1 *Salk.* 79. 2 *Haw.* 129.

10. It

Retaking after arreſt.

10. It hath been holden, that if a conſtable, after he hath arreſted the party by force of a warrant, ſuffer him to go at large, upon his promiſe to come again and find ſureties, he cannot afterwards arreſt him by force of the ſame warrant: However if the party return, and put himſelf again under the cuſtody of the conſtable, it ſeems that it may be probably argued, that the conſtable may lawfully detain him, and bring him before the juſtice, in purſuance of ſuch warrant; but in this the law doth not ſeem to be clearly ſettled. 2 *Haw.* 81.

But if the party arreſted do eſcape, the officer upon freſh ſuit may take him again and again, ſo often as he eſcapeth, altho' he were out of view, or that he ſhall fly into another town or county. *Dalt. c.* 169.

V. What is to be done after the arreſt.

By a private perſon.

1. When a private perſon hath arreſted a felon, or one ſuſpected of felony, he may detain him in cuſtody till he can reaſonably diſmiſs himſelf of him; but with as much ſpeed as conveniently he can, he may do any of theſe three things:

(1) He may carry him to the common gaol; but that is now rarely done. 1 *H. H.* 589. 2 *H. H.* 77.

(2) He may deliver him to the conſtable, who may either carry him to gaol, or to a juſtice of the peace. 1 *H. H.* 589.

(3) He may carry him immediately to a juſtice of the peace. 1 *H. H.* 589.

By a watchman.

2. If the conſtable, or his watch, hath arreſted affrayers, or perſons drinking in an alehouſe diſorderly at an unſeaſonable time of night, he may put the perſons in the ſtocks, or in a priſon if there be one in the vill, till the heat of their paſſion or intemperance is over, tho' he deliver them afterwards; or till he can bring them before a juſtice. 2 *H. H.* 95.

By an officer by warrant.

3. If the arreſt is by virtue of a warrant, when the officer hath made the arreſt, he is forthwith to bring the party, according to the direction of the warrant: If it be to bring the party before the juſtice who granted the warrant ſpecially, then the officer is bound to bring him before the ſame juſtice; but if the warrant be to bring him before any juſtice of the county, then it is in the election of the officer, to bring him before what juſtice he thinks fit, and not in the election of the priſoner. 1 *H. H.* 582. 2 *H. H.* 112.

But if the time be unſeaſonable, as in or near the night, whereby he cannot attend the juſtice, or if there be danger of a preſent reſcue, or if the party be ſick, he may ſecure him in the ſtocks, or in an houſe, till the next day, or ſuch time as it may be reaſonable to bring him. 2 *H. H.* 120.

And when he hath brought him to the juſtice, yet he is in law ſtill in his cuſtody, till the juſtice diſcharge, or bail, or commit him. 2 *H. H.* 120.

Returning the warrant.

4. But it is ſaid, the conſtable is not obliged to return the warrant itſelf, but may keep it for his own juſtification, in caſe he ſhould

ſhould be queſtioned for what he had done; but only to return what he has done upon it. Lord *Raym.* 1196.

5. And this ſeems to be implied in the ſtatute of the 24 *G.* 2. *c.* 44. which enacteth, that no action ſhall be brought againſt any conſtable or other officer, or perſon acting by his order, and in his aid, for any thing done in obedience to the warrant of a juſtice of the peace, until demand hath been made, or left at the uſual place of his abode, by the party, or by his attorney, in writing, ſigned by the party demanding the ſame, of the peruſal and copy of ſuch warrant, and the ſame hath been refuſed or neglected for ſix days after ſuch demand: And if after compliance therewith, any ſuch action ſhall be brought, without making the juſtice who ſigned the warrant defendant, on producing and proving ſuch warrant at the trial, the jury ſhall give their verdict for the defendant. *ſ.* 6. And it is certain the conſtable cannot grant a peruſal or copy of the warrant, unleſs he hath it in his cuſtody. Conſtable indemnified.

6. By an ancient ſtatute, 27 *H.* 6. *c.* 10. No ſheriff ſhall take for any arreſt, but 20 *d.* and the bailiff which maketh the arreſt 4 *d.* on pain of 40 *l.* half to the king, and half to him that will ſue in ſeſſions (or the courts above) and treble damages to the party injured. Fee for an arreſt.

Upon which ſtatute perhaps may be founded the cuſtom in many places, of giving 4 *d.* to the conſtable with the warrant, for his trouble in executing the ſame: which indeed at that time might be a reaſonable ſatisfaction; for 4 *d.* then was worth more than ten times the value of 4 *d.* now. Which decreaſe in the value of money, in this and many other caſes depending upon ancient ſtatutes, may ſeem to require ſome conſideration.

The rewards for arreſting or apprehending highwaymen and others, may be found under their reſpective titles.

Arſon. See **Burning.**

Artificers. See **Servants.**

Aſſault and Battery.

I. Aſſault, what.
II. Battery, what.
III. In what caſes they may be juſtified.
IV. How puniſhed.

I. Aſſault, what.

ASSAULT, *aſſultus*, from the french *aſſaylor*, is an attempt or offer, with force and violence, to do a corporal hurt to another; as by ſtriking at him with or without a weapon; or preſenting a gun at him, at ſuch a diſtance to which the gun will carry; or pointing a pitch fork at him, ſtanding within the reach of it; or by holding up one's fiſt at him; or by any other ſuch like act, done in an angry, threatning manner. 1 *Haw.* 133.

And from hence it clearly follows, that one charged with an aſſault and battery, may be found guilty of the aſſault, and yet acquitted of the battery: But every battery includes an aſſault; therefore on an indictment of aſſault and battery, in which the aſſault is ill laid, if the defendant be found guilty of the battery, it is ſufficient. 1 *Haw.* 134.

Notwithſtanding the many ancient opinions to the contrary, it ſeems agreed at this day, that no words whatſoever can amount to an aſſault. 1 *Haw.* 134.

II. Battery, what.

Battery (from the Saxon *batte*, a club, or *beatan*, to beat, from whence cometh alſo the word *battle*) ſeemeth to be, when any injury whatſoever, be it never ſo ſmall, is actually done to the perſon of a man, in an angry, or revengeful, or rude, or inſolent manner, as by ſpitting in his face, or any way touching him in anger, or violently juſtling him out of the way, and the like. 1 *Haw.* 134.

III. In what caſes they may be juſtified.

A perſon may juſtify an aſſault, in defence of his perſon, or of his wife, or maſter, or parent, or child within age; and even a *wounding* may be juſtified in defence of his perſon, but not of his poſſeſſions. 3 *Salk.* 46.

Alſo if an officer having a lawful warrant lay hands on another to arreſt him, or if a parent in a reaſonable manner chaſtiſe his child, a maſter his ſervant, a ſchoolmaſter his ſcholar, a gaoler his priſoner, and even a huſband his wife as ſome ſay; or if one confine a friend who is mad, and bind and beat him in ſuch a manner as is proper in his circumſtances; or if a man force a ſword from

one who offers to kill another therewith; in all theſe caſes, and ſuch like, it is juſtifiable. 1 *Haw.* 130.

Likewiſe a perſon may juſtify in aſſault and battery of another, who doth menace or aſſault him, and attempt to beat him from his lawful watercourſe or highway. *Pult.* 42.

Likewiſe, if a perſon comes into my houſe, and will not go out, I may juſtify laying hold of him, and turning him out. *Neſſ. Aſſault.*

And where a man in his own defence beats another who firſt aſſaults him, he may take advantage thereof, both upon an indictment, and upon an action; but with this difference, that on an indictment he may give it in evidence upon the plea of not guilty, but on an action he muſt plead it ſpecially. 1 *Haw.* 134.

IV. How puniſhed.

There is no doubt but that the wrong-doer is ſubject both to an action at the ſuit of the party, wherein he ſhall render damages; and alſo to an indictment at the ſuit of the king, wherein he ſhall be fined according to the heinouſneſs of the offence. 1 *Haw.* 134.

And by 6 *G. c.* 23. *ſ.* 11. Aſſaulting in the ſtreet or highway, with intent to ſpoil people's cloaths, and ſo ſpoiling them, is felony and tranſportation.

And by 7 *G.* 2. *c.* 21. Aſſaulting with intent to rob, is alſo made felony and tranſportation.

And by 9 *An. c.* 16. Aſſaulting a privy counſellor in the execution of his office, is felony without benefit of clergy.

A private aſſault is not inquirable in the leet, not being a common nuſance, as all affrays are. 1 *Haw.* 135.

Warrant for an aſſault.

Weſtmorland. { To the conſtable of ———.

WHEREAS *complaint hath been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *of* ——— *in the ſaid county, taylor, that* A. O. *of* ——— *aforeſaid, butcher, did on the* ——— *day of* ——— *violently aſſault and beat him the ſaid* A. I. *at* ——— *aforeſaid in the county aforeſaid: Theſe are therefore in his ſaid majeſty's name, to command you forthwith to apprehend the ſaid* A. O. *and to bring him before me to anſwer unto the ſaid complaint, and to be further dealt withal according to law. Given under my hand and ſeal the* ——— *day of* &c.

Indictment for an aſſault.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *of* ——— *in the ſaid county, butcher, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforeſaid in the county aforeſaid, in and upon* A. I. *taylor, then and there being in the peace of god and of our ſaid lord the king, with force*

force and arms, an assault did make, and him the said A. I. *then and there did beat, wound, and evil intreat, and then and there to him other enormous things did, to the great damage and hurt of him the said* A. I. *and to the evil example of all others offending in the like kind, and against the peace of our said lord the king, his crown and dignity.*

Assizes.

Assize, what.

1. ASSISE *(assessio)* anciently signified in general, a court where the judges or assessors heard and determined causes; and more particularly upon writs of *assise* brought before them, by such as were wrongfully put out of their possessions. Which writs heretofore were very frequent; but now mens possessions are more easily recovered by ejectments, and the like. Yet still the judges in their circuits have a commission of *assise*, directed to themselves and the clerk of assize, to take assizes, and to do right upon such writs.

The circuit commissions.

2. To which commission of *assise*, four other commissions are now superadded; to wit,

(1) A commission of *general gaol delivery*, directed to the judges and the clerk of assize associate; which gives them power to try every prisoner in the gaol, committed for any offence whatsoever, but none but prisoners in the gaol.

(2) A commission of *oyer and terminer*, directed to the judges and many other gentlemen of the county; by which they are impowered to hear and determine treasons, felonies, and other misdemeanors, by whomsoever committed, whether the persons to be tried be in gaol or not in gaol.

(3) A commission or writ of *nisi prius*, directed to the judges and clerk of assize, by which civil causes brought to issue in the courts above, are tried in the vacation by a jury of twelve men of the county where the cause of action arises; and on return of the verdict of the jury to the court above, the judges there give judgment.

(4) A commission of the *peace* in every county of their circuit.

Sheriffs, justices, and others to attend there.

3. By the precept for the general gaol delivery abovementioned, the sheriff is commanded to attend there in person, with his undersheriff; and to give notice to all justices of the peace, mayors, coroners, escheators, stewards, and also to all chief constables and bailiffs of hundreds and liberties, that they be then and there in their own persons, with their rolls, records, indictments, and other remembrances, to do those things which to their offices in that behalf appertain to be done.

By virtue whereof, all justices of the peace, mayors, and others abovementioned, of that county where the judges have their assizes, are bound to be present; and if they make default, without lawful impediment, the judges may set a fine upon them for their neglect. *Cr. Circ.* 4.

4. Also,

4. Alſo, by ancient cuſtom (that is, by the common law of the land) before the coming of the judges, the high conſtables iſſue their warrants to the petty conſtables, to make preſentments of all crimes and offences cognizable at the aſſizes; to the intent (as it ſeemeth) that the judges thereby may have a general information and knowledge, how the peace hath been kept: which preſentments being delivered to the high conſtables, are by them delivered into court, and make up part of the rolls, and other remembrances abovementioned. Conſtables preſentments.

Which ſaid warrants of the high conſtables perhaps may be beſt drawn upon the words of the commiſſion of oyer and terminer, which is the largeſt of all the five commiſſions abovementioned: And then the form thereof may be thus;

Weſtmorland East Ward. } To the conſtable of —— in the ſaid county.

THESE *are to require you the ſaid conſtable, in his majeſty's name, to make out a preſentment in writing of all treaſons, miſpriſions of treaſons, inſurrections, rebellions; counterfeitings, clippings, waſhings, falſe coinings, and other falſities of the money of* Great Britain, *and of other kingdoms and dominions whatſoever; and of all murders, felonies, manſlaughters, killings, burglaries, ropes of women, unlawful meetings and conventicles, unlawful uttering of words, aſſemblies, miſpriſions, confederacies, falſe allegations, treſpaſſes, riots, routs, retentions, eſcapes, contempts, falſities, negligences, concealments, maintenance, oppreſſions, champerty, deceits, and all other evil doings, offences, and injuries whatſoever; and alſo the acceſſaries of them; by whomſoever, and in what manner ſoever, done, committed, or perpetrated, within your conſtablewick. Which ſaid preſentment ſo made in writing as aforeſaid, and ſigned by you, you are to deliver to me at —— in the ſaid county, on —— the —— day of —— at the hour of —— in the forenoon of the ſame day, that I may have the ſaid preſentment ready to be delivered to his ſaid majeſty's juſtices of over and terminer and general gaol delivery at the next aſſizes to be holden for the ſaid county. Herein fail you not, as you will anſwer the contrary at your peril. Given under my hand, the —— day of —— in the year of our lord ——*

John Bowneſs, *High Conſtable.*

Attachment.

THIS word, as a law term, we have immediately from the French *attacher*, to tye, or make faſt. The Italian word is *attacare*; the Spaniſh *attacar*; and the Saxon *tæcan*, to take.

It ſignifieth the taking of a man's body by commandment of a writ or precept; and is properly grantable in caſes of contempts, againſt which for the moſt part all courts of record generally, but more eſpecially thoſe of *Weſtminſter* hall, and above all the court of

king's bench, may proceed in a ſummary manner, according to their diſcretion. 2 *Haw.* 141.

But in the caſe of *K.* and *Bartlett*, *H.* 8 *G.* 2. it is ſaid, that generally the ſeſſions have not a power to award an attachment; but the court ſaid, they would not determine how it would have been, if they had committed the perſon for contempt; but the ordinary and proper method is, by indictment. *Seſſ. Ca. V.* 2. 176.

Attainder.

THE difference between a man attainted and convicted is, that a man is ſaid to be convicted before he hath judgment, as if a man be convicted by verdict or confeſſion; and when he hath his judgment upon the verdict or confeſſion, then he is ſaid to be attainted. 1 *Inſt.* 390.

That is to ſay, his blood is become *(attinctus) tainted*, ſtained, or corrupted: inſomuch that by the common law, in caſes of treaſon or felony, his children or other kindred cannot inherit his eſtate, nor his wife claim her dower; and the ſame cannot be reſtored or ſaved, but by act of parliament: and therefore in divers inſtances, there is a ſpecial proviſion by act of parliament, that ſuch or ſuch an attainder ſhall not work corruption of blood, loſs of dower, nor diſheriſon of heirs.

Attaint.

ATTAINT is a writ that lieth, where a falſe verdict in a court of record, upon an iſſue joined by the parties, is given. 1 *Inſt.* 294. Which is treated of under title **Juroꝛs.**

Attoꝛney.

Derivation.

1. ATTORNEY is an ancient *Engliſh* word, and ſignifieth one that is ſet in the *turn*, ſtead, or place of another. 1 *Inſt.* 51.

Acting before inrolled.

2. By the 2 *G.* 2. *c.* 23. (which by the 22 *G.* 2. *c.* 46. hath continuance to *June* 24. 1757, *&c.*) If any perſon ſhall act as attorney or ſolicitor, for gain or reward, without being duly admitted and inrolled; he ſhall forfeit 50 *l.* with treble coſts, to him who ſhall ſue in 12 months in any court of record at *Weſtminſter*, or at the aſſizes, or ſeſſions where the offence ſhall be committed:

and no proceedings thereupon ſhall be removed before judgment, or ſtayed by any *certiorari* or other writ. *ſ.* 24, 25.

3. No attorney or ſolicitor ſhall be capable to continue or be a juſtice of the peace, during ſuch time as he ſhall continue in the buſineſs and practice of an attorney or ſolicitor. 5 *G.* 2. *c.* 18. *ſ.* 2. Acting as juſtice of the peace.

And if any perſon, not qualified according to the directions of this act, ſhall act as a juſtice of the peace; he ſhall forfeit 100 *l.* half to the king, and half to him that ſhall ſue in any court of record. *ſ.* 3.

4. No recuſant convict ſhall practiſe as an attorney or ſolicitor; on pain of 100 *l.* in like manner. 3 *J.* *c.* 5. *ſ.* 8. Acting being a recuſant.

5. If any perſon who hath been convicted of forgery, perjury, or ſubornation, or common barratry, ſhall practiſe as an attorney or ſolicitor; he ſhall be tranſported for ſeven years. 12 *G.* *c.* 29. *ſ.* 4. Convicted of forgery, &c.

6. If any perſon, not legally admitted as an attorney or ſolicitor, ſhall act as ſuch in any county court; he ſhall forfeit 20 *l.* with coſts, to him who ſhall ſue in 12 months in any court of record. 12 *G.* 2. *c.* 13. *ſ.* 7. Who may act as attorney in the county court.

7. No perſon ſhall act as attorney or ſolicitor, at any general or quarter ſeſſions of the peace, unleſs he hath been admitted and inrolled in one of the courts of record at *Weſtminſter*; on pain of 50 *l.* with treble coſts to him who ſhall ſue in 12 months in any of the ſaid courts at *Weſtminſter*; and if any attorney ſhall permit any perſon to make uſe of his name in ſuch ſeſſions, he ſhall forfeit 50 *l.* in like manner. 22 *G.* 2. *c.* 46. *ſ.* 12. Who may act as attorney in the ſeſſions.

And no clerk of the peace, under-ſheriff, or their deputies, ſhall act as ſolicitor, attorney, or agent at any general or quarter ſeſſions; on like pain of 50 *l.* *ſ.* 14.

8. If a ſworn attorney be choſen conſtable, he may have a writ of privilege for his diſcharge, becauſe of his perſonal attendance which is required in the courts wherein he is an attorney. 2 *Haw.* 63. How far exempted from offices.

And, more generally, it is ſaid, that attorneys ſhall not be elected to any office without their own conſent, by reaſon of their ſaid attendance in the courts. *Cro. Car.* 11, 585.

Yet it hath been ſaid, that an attorney ſhall not be excuſed by privilege from offices, which may be executed by deputy; but only thoſe which require perſonal duty. *March* 30.

Award.

IT is judged not foreign to the office of a keeper of the peace, to have ſome knowledge of the law contained under this title: Concerning which we will ſhew,

I. What things may be ſubmitted to arbitration.
II. The ſeveral kinds of ſubmiſſion to arbitration.
III. The award; and therein what ſhall be deemed a good award, and what not.

I. What things may be ſubmitted to arbitration.

Actions perſonal.

1. It is held clearly, that all matters of controverſy, either of fact, or of a right in things and actions perſonal and uncertain, may be ſubmitted to arbitration. 9 *Co.* 78.

Matters of freehold.

2. All matters of freehold, or any right and title to a freehold, cannot be ſubmitted to arbitrament; for a freehold is not transferable from one to another, without livery and ſeiſin: Yet if there be a ſubmiſſion concerning the right, title, or poſſeſſion of lands and tenements, and the parties enter into mutual bonds, to ſtand to the award made relating to them, they forfeit their bonds unleſs they obey it. 1 *Roll's Abr.* 242, 244. *Read. Arb. Wood* 920.

A thing certain.

3. A thing certain, as a debt due by bond or record, an annuity, and the like, cannot be ſubmitted otherwiſe than by writing; and it is moſt adviſable that the parties enter into bonds. 1 *Roll's Abr.* 264. *Cro. El.* 422.

Criminal offences.

4. Criminal matters, as treaſons, murders, felonies, and other offences indictable at the ſuit of the king, cannot be ſubmitted to arbitrament; for it is for the good of the common wealth, that ſuch offenders be made known and puniſhed: and the king in ſuch caſes is a party, for whom the other parties cannot undertake. *Weſt. Symb. Part* 2. *ſ.* 33.

But if the party injured proceeds by way of action, as he may in aſſaults and batteries, libels, and the like; the damages he ſuſtained, or expects to recover, may be ſubmitted to arbitration: for in ſuch caſe the action is for himſelf, and not for the king. *Compleat Arbitrator* 28.

Matrimonial cauſes.

5. Alſo matrimonial cauſes, or any thing concerning the contract or diſſolution of marriage, cannot be ſubmitted to arbitrament. 1 *Roll's Abr.* 252.

But the damages a perſon ſuſtained by a promiſe of marriage, or any thing relating to a marriage portion, may be ſubmitted. 16 *Ed.* 4. 2.

II. The ſeveral kinds of ſubmiſſion to arbitration.

By parol.

1. A ſubmiſſion by *words* is good, and the party in whoſe favour the award is made, hath a remedy to inforce a performance

of it: Yet it is not expedient that any ſubmiſſion ſhould be by parol, becauſe the party may revoke it at pleaſure, at any time before the award made, and that by word likewiſe; and the judges will rarely inforce the performance of an award, when either the ſubmiſſion or the award is by parol, becauſe it lays ſo great a foundation for perjury. *Compl. Arb.* 21.

2. Submiſſion may alſo be by *covenant*; but this method is ſeldom uſed: for tho' it contains the ſame certainty with a bond, yet the method of ſuing on a covenant is different, and more difficult than in ſuing on a bond. *Compl. Arb.* 7. 46. By covenant.

3. Submiſſion by *rule of court* (A) is made in purſuance of the ſtatute 9 & 10 *W.* c. 15. which enacteth as follows: By rule of court.

It ſhall be lawful for all merchants and traders, and others deſiring to end any controverſy, ſuit, or quarrel (for which there is no other remedy but by perſonal action, or ſuit in equity) by arbitration, to agree that their ſubmiſſion to the award or umpirage be made a rule of any of his majeſty's courts of record, which the parties ſhall chooſe, and to inſert ſuch agreement in their ſubmiſſion, or the condition of the bond, or promiſe, whereby they ſubmit themſelves: Which agreement being ſo made, and inſerted in their ſubmiſſion or promiſe, or condition of their reſpective bonds, ſhall or may, on producing an affidavit thereof, made by the witneſſes thereunto, or any one of them, in the court of which the ſame is agreed to be made a rule, and reading and filing the ſaid affidavit in court, be entred of record in ſuch court; and a rule ſhall thereupon be made in the ſaid court, that the parties ſhall ſubmit to, and finally be concluded by ſuch arbitration or umpirage; and in caſe of diſobedience to ſuch arbitration or umpirage, the party neglecting or refuſing to perform the ſame, or any part thereof, ſhall be ſubject to all the penalties of contemning a rule of court; and the court on motion ſhall iſſue proceſs accordingly; which proceſs ſhall not be ſtopped or delayed in its execution, by any order of any other court of law or equity, unleſs it ſhall be made appear on oath to ſuch court, that the arbitrators or umpire miſbehaved themſelves, and that ſuch award was procured by corruption, or other undue means.

And this is allowed to be the moſt expeditious way; and the method is to get a counſel to move in any of the courts to have it made a rule, which in ſuch caſe is never denied; and then the party is liable to the ſame penalties that he would be for diſobeying any other rule of court. *Compl. Arb.* 6. 47.

4. Or laſtly, the ſubmiſſion may be by bond (B). In which caſe, each party muſt give to the other a bond; which bond, and condition, muſt contain exactly the ſame words, only changing the names of the parties. And the penalty of the bond ſhould at leaſt be the value of the thing ſubmitted; ſo that the party may rather abide by the award, than forfeit his obligation. *Compl. Arb.* 46. By bond.

And undoubtedly a ſubmiſſion by bond in ſome reſpects, exceeds a ſubmiſſion by rule of court; for an award made purſuant to bonds of ſubmiſſion, may bind the parties executors; but if the party, who refuſes to perform an award made purſuant to a rule

of court, ſhall die, the act of parliament directing that the proſecution ſhall be carried on by attachment, the remedy being loſt, the award is loſt likewiſe. *Compl. Arb.* 34.

Both by bond and rule of court.

5. Sometimes the ſubmiſſion is both by bond and rule of court, by adding the party's conſent at the bottom of the condition of the bond; and this is ſtill the beſt way, for then the party may proceed which way he pleaſes: and it is ſaid, that he may proceed both ways; that is to ſay, both on the bond, and have an attachment likewiſe for the contempt. 1 *Salk.* 73.

Whether the ſubmiſſion may be countermanded.

6. But in which way ſoever the ſubmiſſion is made, the ſame nevertheleſs may be revoked, tho' made irrevocable by the ſtrongeſt words; for a man cannot by his own act, make ſuch authority or power not countermandable, which by the law and in its own nature is countermandable. 8 *Co.* 82.

But if the ſubmiſſion be by bond, if the party revokes, he forfeits his obligation, for that he hath broken the words of the condition, which are, that he ſhall ſtand to and abide the award. And if he revokes, he muſt likewiſe give notice of the revocation; and if the ſubmiſſion was by bond, the revocation muſt be in writing. 8 *Co.* 82.

And if the ſubmiſſion be made a rule of court, purſuant to the act of parliament; if either of the parties revokes, the court will grant an attachment. *Compl. Arb.* 82.

But if the ſubmiſſion be by word, the party may revoke at pleaſure, and he forfeits nothing; but he muſt in this caſe likewiſe give notice of the revocation, tho' it need not be in writing: and the notice muſt be to the arbitrators themſelves. 8 *Co.* 82.

III. The award (C); *and therein what ſhall be deemed a good award, and what not.*

Arbitrators cannot adminiſter an oath.

1. The arbitrators cannot injoin an oath to the witneſſes, there being no law which gives them any ſuch power.

Award beſt to be in writing.

2. It is highly convenient that the award be in writing, and ſo to be mentioned in the ſubmiſſion. *Compl. Arb.* 34.

Whether it ſhall be upon ſtamp.

3. It is not required by any of the ſtamp acts, that an award by name ſhall be on ſtamped paper or parchment; nor doth it ſeem to be comprehended under any deſcription in the ſaid acts, unleſs it be under theſe general words [*obligatory inſtrument*]; and if ſo, then it ſhall be on a double ſixpenny ſtamp.

Award to be according to the ſubmiſſion.

4. One thing eſſential to a good award, is, that it be made, with reſpect to perſons and things, according to the ſubmiſſion. *Wood* 921.

Upon which ground, as the arbitrators are, with reſpect to the things ſubmitted, circumſcribed and tied down to the ſubmiſſion; ſo in ſeveral caſes it has been diſputed, whether their awarding releaſes to the time of the award, and not to the time of the ſubmiſſion, was good; it is therefore moſt adviſable to award releaſes to the time of the ſubmiſſion; tho' it is now clearly held, that general releaſes ſhall extend only to the time of the ſubmiſſion, and that, if there be releaſes awarded to the time of the award, they ſhall be good, unleſs it be ſhewn on the other ſide, that ſome

new

new matter hath arisen between the parties between the submission and award. 1 *Roll Abr.* 242. 6 *Mod.* 34.

If the submission be, *so as the award be ready to be delivered to the parties or to such of them as shall desire the same*, the parties so bound are themselves obliged to take notice of the award at their peril; but if the words of the submission be, *so that the award be delivered to each party by such a day*, then it must be delivered to each party accordingly. *Read. Arb. Wood* 921.

But tho' the words of the submission may be such, as will oblige the parties to take notice of the award at their peril; yet if the arbitrators award that one of the parties shall do an act, which depends upon another first to be done of the other party, he must have notice of it; at least the party who would take advantage of it, must shew that he hath done what was necessary on his part. *Compl. Arb.* 12.

Award to be beneficial to either party.

5. Also, it is required, that the award be beneficial, and appoint something advantageous to either party; for an award of one side only, is not good: so if an award be, that one of the parties shall go to *Rome*, when it appears that there is no advantage to the other party by his going, it is void. *Wood* 922.

So if a man and woman submit themselves to an award, it is no good award that they shall *intermarry*, for this is not intended any advantage. 1 *Roll Abr.* 252.

Award to be possible and lawful.

6. Also it is required in a good award, that it be possible and lawful. *Wood* 922.

Thus, if an award be, that one of the parties shall kill, steal, forge a deed, or the like, it is void. 1 *Inst.* 206.

In like manner, if it be awarded, that money shall be paid to an infant, and that he shall make a release, it is void; for the infant's release is not good in law.

Also it is held, that where a thing is awarded to be done, which afterwards becomes impossible by the act of god, the party is excused; as if an award be, to deliver a horse before such a day, and he dies before that day. 21 *Ed.* 4. 70.

Award to be certain and final.

7. Also, it is required, that the award be certain and final. *Wood* 922.

Upon which ground it hath been resolved, that if the arbitrators award, that one of the parties beg the other's pardon before such a mayor, or such and such persons, it is good and certain enough; but if the award be, that he shall beg pardon in such manner and in such place as the other party shall appoint, it is not good: for the arbitrators are to determine, and not to make such party his own judge in his own cause. And tho' the time and place be but circumstances, yet in this sort of satisfaction they make the most considerable part. 1 *Salk.* 71.

Upon which ground also, the arbitrators cannot regularly reserve any thing for their future judgment, when the time allowed them is expired; for then such their award is not certain and final. *Cro. Jac.* 585.

H. 13 *G. Dudley* and *Nettleford.* Upon a reference it was awarded, that the plaintiff should pay the costs; and there being

no body appointed to tax them, the court ſupplied it by ordering the maſter to do it. *Strange* 737.

Award to be conſtrued favourably, except in caſe of partiality or corruption.

8. But if theſe things are obſerved, the award ſhall be expounded according to the intent of the arbitrators, and not literally, and ſhall not be unravelled in a court of equity, unleſs there was corruption in the arbitrators. 10 *Co.* 57. *Wood* 922. *Read. Arb.*

But in the caſe of corruption, or other unfair practice, it is enacted by the aforeſaid ſtatute of 9 & 10 *W. c.* 15. that any arbitration or umpirage procured by corruption or undue means, ſhall be deemed void, and accordingly be ſet aſide by any court of law or equity, ſo as complaint thereof be made in the court where the rule is made, before the laſt day of the next term after publiſhing the arbitration. *ſ.* 2.

But generally, as the arbitrators are perſons of the parties own chuſing, and as the law preſumes that every man will be ſo wiſe as to pitch upon a perſon whoſe underſtanding and honeſty he can rely on; it hath ſeldom happened, that an award was held void when there appeared nothing elſe to vitiate it, eſpecially in a court of law: yet awards have been, and are often ſet aſide in a court of equity, for corruption and want of underſtanding in the arbitrators. *Compl. Arb.* 73.

Therefore it is the intereſt of both parties, to chuſe men of honeſty and underſtanding to be their arbitrators, and to acquaint them truly with the facts they are to go upon; for if they appear to be miſtaken in a matter of fact, a court of equity will ſet aſide the award. 2 *Vern.* 705.

But a bare ſuggeſtion of want of underſtanding, or want of honeſty, will not be ſufficient; the proof muſt be ſtrong, and the rather, becauſe (as was ſaid) they are of the party's own chuſing, who by his choice of them, admitted them to be wiſe and honeſt enough for his purpoſe. *Compl. Arb.* 74.

If a ſubmiſſion is to three arbitrators, or any two of them, and two of them by fraud or force will exclude the other; that alone is ſufficient to vitiate the award: or if they have private meetings, and admit one of the parties, but give no notice to the other, but ſuffer the attorney of the party whom they admitted, to draw up the award; ſuch award ſhall be ſet aſide for partiality and unfairneſs. 2 *Vern.* 514.

It is a general rule in equity, that when it appears that any one of the arbitrators were any way *intereſted* in the matters in controverſy, the award is to be ſet aſide. *Compl. Arb.* 75.

And it is the ſtrongeſt argument of partiality, to ſhew that the arbitrators received from either of the parties any conſiderable ſum of money, or any other preſent which may be a temptation to act corruptly; but the ſum or preſent muſt be proved to be ſo exorbitant, as to induce the court to believe that it biaſſed their judgments; otherwiſe it will be of no effect. *Compl. Arb.* 76.

Where the award appoints no time, the thing is to be done immediately.

9. If the arbitrators award a thing to be done, it may be proper for them to appoint a time and place for the doing of it; and the party who would take advantage of it, muſt ſhew that he has done

done what was requiſite on his part: but if a thing is to be done generally, without mentioning time and place, it ſhall be done immediately. 2 *Brown.* 311.

10. If the ſubmiſſion is by rule of court, it is neceſſary that there be a perſonal demand of the thing awarded; and the party muſt make affidavit of ſuch demand, before he can have an attachment. 1 *Salk.* 83. Demand to be before attachment.

11. If a ſum of money be awarded to one of the parties, and that upon the payment thereof they both ſhall give mutual releaſes; if he who is to receive the money, refuſes it, yet upon a tender and refuſal, he is as much obliged to ſign a releaſe as if he actually received it. 1 *Salk.* 75. On tender and refuſal, the party refuſing ſhall nevertheleſs ſign a releaſe.

A. Form of a ſubmiſſion by rule of court.

WHEREAS *divers diſputes and controverſies have ariſen, and are now depending, between* A. B. *of* ——— *in the county of* ——— *yeoman, of the one part, and* C. D. *of* ——— *in the ſaid county, yeoman, of the other part, touching and concerning* ——— *Now for the ending and deciding thereof, it is hereby mutually agreed by and between the ſaid parties, that all matters in difference between them for, touching, and concerning all and every the matters and things herein above ſpecified and particularly mentioned, ſhall be referred and ſubmitted to the arbitrament, final end, and determination of* A. A. *of* ——— *in the ſaid county, gentleman,* B. A. *of* ——— *in the ſaid county, yeoman, and* C. A. *of* ——— *in the ſaid county, yeoman, or any two of them, arbitrators indifferently elected by the ſaid parties, ſo as the ſaid arbitrators, or any two of them, do make and publiſh their award in writing ready to be delivered to the ſaid parties, or ſuch of them as ſhall deſire the ſame, on or before the* ——— *day of* ——— *next enſuing the date hereof: And it is hereby mutually agreed by and between the ſaid parties, that this ſubmiſſion ſhall be made a rule of his majeſty's court of king's bench at* Weſtminſter. *In witneſs whereof the ſaid parties to theſe preſents have hereunto ſet their hands this* ——— *day of* ——— *in the* ——— *year* &c.

B. Arbitration bond.

KNOW *all men by theſe preſents, that I* A. B. *of* ——— *in the county of* ——— *gentleman, am held and firmly bound to* C. D. *of* ——— *in the ſaid county of* ——— *yeoman, in* ——— *pounds of good and lawful money of* Great Britain, *to be paid to the ſaid* C. D. *or to his certain attorney, his executors, adminiſtrators, or aſſigns: To which payment well and truly to be made, I bind my ſelf, my heirs, executors, and adminiſtrators firmly by theſe preſents, ſealed with my ſeal, and dated the* ——— *day of* ——— *in the* ——— *year of the reign of our ſovereign lord* George *the ſecond, of* Great Britain, France *and* Ireland, *king,*

king, defender of the faith, and ſo forth, and in the year of our lord ———.

Condition to ſtand to the award of two arbitrators, in common form:

THE *condition of the above obligation is ſuch, that if the above bound* A. B. *his heirs, executors, and adminiſtrators, and every of them, for and on his and their parts and behalfs, do and ſhall well and truly ſtand to, obey, abide, perform, obſerve and keep the award, order, arbitrament, final end and determination of* A. A. *of* ——— *eſquire, and* B. A. *of* ——— *gentleman, arbitrators indifferently named, elected, and choſen, as well for and on the part and behalf of the abovebound* A. B. *as of the abovenamed* C. D. *to arbitrate, award, order, adjudge and determine of and concerning all and all manner of action and actions, cauſe and cauſes of action and actions, ſuits, bills, bonds, ſpecialties, judgments, executions, extents, accounts, debts, dues, ſum and ſums of money, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, both in law and equity, or otherwiſe howſoever, which at any time or times heretofore have been had, made, moved, brought, commenced, ſued, proſecuted, committed, omitted, done or ſuffered by or between the ſaid parties, ſo as the ſaid award be made in writing, and ready to be delivered to the ſaid parties, on or before the* ——— *day of* ——— *now next enſuing, then this obligation to be void, otherwiſe of force.*

If the parties have a mind to make their ſubmiſſion a rule of court, then this may be added:

And the abovebound A. B. *doth agree and deſire, that this his ſubmiſſion be made a rule of his majeſty's court of king's bench at* Weſtminſter, *purſuant to the act of parliament in ſuch caſe made and provided.*

Condition to ſtand to the award of three arbitrators, or any two of them, and an umpire appointed:

THE *condition of this obligation is ſuch, that if the abovebound* A. B. *his heirs, executors, and adminiſtrators, for and on his and their parts and behalfs, ſhall and do well and truly ſtand to, obey, abide, obſerve, perform, fulfil, and keep the award, order, arbitrament, final end and determination of* ——— *or any two of them, arbitrators indifferently elected and made, as well by and on the part and behalf of the ſaid* A. B. *as by and on the part and behalf of the abovenamed* C. D. *to arbitrate, award, order judge and determine, of and concerning all and all manner of action and actions, cauſe and cauſes of action and actions, ſuits, bills, bonds, ſpecialties, covenants, contracts, promiſes, accounts, reckonings,*

lings, ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, at any time heretofore had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed, or depending by or between the ſaid parties; ſo as the award of the ſaid arbitrators, or any two of them, be made and ſet down in writing, under their or any two of their hands and ſeals, ready to be delivered to the ſaid parties in difference, on or before the ——— day of ——— now next enſuing; then this obligation to be void, otherwiſe of force.

And if the ſaid arbitrators ſhall not make ſuch their award of and concerning the premiſſes, within the time limited as aforeſaid, then if the ſaid A. B. *his heirs, executors, and adminiſtrators, for and on his and their part and behalf, do and ſhall well and truly ſtand to, obſerve, perform, fulfil and keep the award, determination, and umpirage* [if the umpire be named] *of ——— being a perſon indifferently named and choſen between the ſaid parties, for umpire;* [if not named] *of ſuch perſon as the ſaid arbitrators ſhall indifferently chuſe for umpire in and concerning the premiſſes; ſo as the ſaid umpire do make and ſet down his award and umpirage in writing, under his hand and ſeal, ready to be delivered to the ſaid parties in difference, on or before the ——— day of ——— now next enſuing: Then this obligation to be void, otherwiſe of force.*

[*And the abovebound* A. B. *doth agree and deſire, that this his ſubmiſſion be made a rule of his majeſty's court of king's bench at* Weſtminſter, *purſuant to the act of parliament in ſuch caſe made.*]

C. Form of an award.

TO *all to whom theſe preſents ſhall come, we* A. B. *of ——— and* C. D. *of ——— do ſend greeting.*

Whereas there are ſeveral accounts depending, and divers controverſies have ariſen, between ——— of ——— yeoman, of the one part, and ——— of ——— yeoman, of the other part; And whereas, for the putting an end to the ſaid differences, they the ſaid ——— and ——— by their ſeveral bonds or obligations bearing date ——— laſt paſt, are reciprocally become bound each to the other, in the penal ſum of ——— to ſtand to, abide, perform, and keep the award, order, and final determination of us the ſaid ——— ſo as the ſaid award be made in writing and ready to be delivered to the parties in difference on or before ——— next enſuing, as by the ſaid obligations and conditions thereof may appear: Now know ye, that we the ſaid arbitrators, whoſe names are hereunto ſubſcribed, and ſeals affixed, taking upon us the burden of the ſaid award, and having fully examined and duly conſidered the proofs and allegations of both the ſaid parties, do make and publiſh this our award between the ſaid parties in manner following; that is to ſay, Firſt, we do award and order, that all actions, ſuits, quarrels, and controverſies whatſoever, had, moved, ariſen, and depending between the ſaid parties in law or equity, for any manner of cauſe whatſoever touching the ſaid premiſſes, to the day of the date hereof,

of, ſhall ceaſe and be no farther proſecuted; and that each of the ſaid parties ſhall pay and bear his own coſts and charges in any wiſe relating to, or concerning the premiſſes. And we do alſo award and order, that the ſaid ——— ſhall deliver or cauſe to be delivered to the ſaid ——— at ——— within the ſpace of ——— &c. *And further, we do hereby award and order, that the ſaid ——— ſhall on or before ——— pay or cauſe to be paid unto the ſaid ——— the ſum of ——— We do alſo award and order* &c. *And laſtly, We do award and order, that the ſaid ——— and ——— on payment of the ſaid ſum of ——— ſhall in due form of law, execute each to the other of them, or to the other's uſe, general releaſes, ſufficient in the law for the releaſing by each to the other of them, his heirs, executors, and adminiſtrators, of all actions, ſuits, arreſts, quarrels, controverſies, and demands whatſoever, touching or concerning the premiſſes aforeſaid, or any matter or thing thereunto relating, from the beginning of the world, until the ——— day of ——— laſt paſt (viz.* the day of the date of the arbitration bonds). *In witneſs whereof we have hereunto ſet our hands and ſeals the ——— day of ———.*

Form of an umpirage.

(RECITE the arbitration bonds, as before) *Now know ye, that I ——— umpire indifferently choſen by ——— having deliberately heard and underſtood the griefs and allegations and proofs of both the ſaid parties, and willing (as much as in me lieth) to ſet the ſaid parties at unity and good accord, do by theſe preſents arbitrate, award, order, decree, and judge as followeth; That is to ſay,* &c.

Badger of Corn. See Corn.

Bail.

I. What it is.
II. Difference between bail and mainprise.
III. When a person may be discharged without bail.
IV. Who may or may not be bailed.
V. Who may bail, and the manner of it.
VI. Requiring excessive bail.
VII. Denying bail where it ought to be granted.
VIII. Granting bail where it ought to be denied.
IX. Of bail by writ of habeas corpus.
X. Acknowledging bail in another man's name.

I. What it is.

BAIL (from the *French bailler*, to deliver) signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him, that he shall appear at a day limited, to answer and be justified by the law. *Hale's Pl.* 96.

II. Difference between bail and mainprise.

The difference between bail and mainprise is, that mainpernors are only surety, but bail is a custody; and therefore the bail may retake the prisoner, if they doubt he will fly, and detain him, and bring him before a justice, and the justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties. *Hale's Pl.* 96.

III. Where a person may be discharged without bail.

If a person be brought before a justice, if it appears that no felony is committed, he may discharge him; but if a felony be committed, tho' it appears not that the party accused is guilty, yet he cannot discharge him, but must commit or bail him. *Hale's Pl.* 98.

IV. Who may or may not be bailed.

At the common law, bail was allowed in all cases but homicide; but now the statute of the 3 *Ed.* 1. *c.* 15. directeth what offenders shall be bailed, and what not. *Hale's Pl.* 97.

It

It is true, the ſaid ſtatute only preſcribeth, who ſhall or ſhall not be let to bail by the *ſheriff*; but by the 1 & 2 *P. & M. c.* 13. it is enacted, that no juſtice or juſtices of the peace ſhall let to bail or mainpriſe any perſon not repleviſable by the ſaid ſtatute of 3 *Ed.* 1. *c.* 15.

Which ſtatute is as follows: *Foraſmuch as ſheriffs and others, which have taken and kept in priſon perſons detected of felony, and incontinent have let out by replevin ſuch as were not repleviſable, and have kept in priſon ſuch as were repleviſable, becauſe they would gain of the one party and grieve the other; and foraſmuch as before this time it was not determined which perſons were repleviſable, and which not, but only thoſe that were taken for the death of man, or by commandment of the king, or of his juſtices, or for the foreſt: It is provided, that ſuch priſoners as before were outlawed, and they which have abjured the realm, provors, and ſuch as be taken with the manner, and thoſe which have broken the king's priſon, thieves openly defamed and known, and ſuch as be appealed by provors ſo long as the provors be living, (if they be not of good name,) and ſuch as be taken for houſeburning felonioufly done, or for falſe money, or for counterfeiting the king's ſeal, or perſons excommunicate taken at the requeſt of the biſhop, or for manifeſt offences, or for treaſon touching the king himſelf, ſhall be in no wiſe repleviſable by the common writ, nor without writ. But ſuch as be indicted of larceny by inqueſts taken before ſheriffs or bailiffs by their office, or of light ſuſpicion, or for petit larceny, that amounteth not above the value of* 12d. *if they were not guilty of ſome other larceny aforetime, or guilty of receipt of felons, or of commandment, or force, or of aid in felony done, or guilty of ſome other treſpaſs for which one ought not to loſe life nor member, and a man appealed by a provor after the death of the provor (if he be no common thief nor defamed), ſhall from henceforth be let out by ſufficient ſurety, whereof the ſheriff will be anſwerable, and that without giving ought of their goods.*

Sheriffs and others) That is to ſay, ſheriffs and gaolers that have cuſtody of gaols; ſo that this act extends not to any of the king's juſtices or judges of any ſuperior courts of juſtice. 2 *Inſt.* 185. But by a ſubſequent ſtatute (as hath been ſaid) it is extended to juſtices of the peace.

But only thoſe, &c.) Here are firſt ſet down four ſorts of perſons which before this act were not bailable by the common writ *de homine replegiando:*

1. *Thoſe that were taken for the death of a man*] By the ancient law of the land, in all caſes of felony, if the party accuſed could find ſufficient ſureties, he was not to be committed to priſon; but afterwards it was provided by parliament, that in caſe of homicide the offender was not bailable. 2 *Inſt.* 186.

And even if a perſon hath dangerouſly *wounded* another, the juſtice ought to be very cautious how he takes bail, till the year and day be paſt; for if the party die, and the offender appear not, he is in danger of being ſeverely fined. 1 *Haw.* 138.

And this ſtatute makes no diſtinction between ſuch homicide as is malicious, and that which happens by miſadventure or in ſelf defence;

defence: And it ſeems agreed, that juſtices of the peace, who have power at this day to bail a man arreſted for a *light ſuſpicion* of homicide, cannot bail any ſuch perſon for manſlaughter, or even excuſable homicide, if it manifeſtly appear that he was guilty of the fact, let it be ever ſo plain that it cannot amount to murder. 2 *Haw.* 95, 105.

2. *Or by commandment of the king*] That is, by matter of record in one of his courts, according to law; and not an extrajudicial commandment. 2 *Inſt.* 186, 187. So alſo it is provided in the petition of rights 3 *Car.* that no perſon ſhall be detained in priſon by the king's ſpecial command, without cauſe certified.

And becauſe ſome courts, as the king's bench, are before the king, and ſome before his juſtices, therefore the act ſaith, *by commandment of the king*, and the next words be, *or of his juſtices*. 2 Inſt. 186.

3. *Or of his juſtices*] That is, of any of the courts of *Weſtminſter*, or juſtices of aſſize. 2 *Haw.* 96.

4. *Or for the foreſt*] But as to impriſonment for offences in foreſts, the law hath been much mitigated by later ſtatutes. 2 *Haw.* 98.

All theſe four are excepted out of the common writ *de homine replegiando*, that the ſheriff in his county court, which is not a court of record, ſhall not replevy any of theſe four that are committed, altho' it ſhould be by an unlawful commitment; but the ſuperior courts at *Weſtminſter*, upon an *habeas corpus*, ſhall do juſtice to the party in all theſe four caſes. 2 *Inſt.* 187.

Next, the act doth further provide, that theſe kinds of priſoners hereafter following (being 13 in number) ſhall not be repleviſable:

1. *Such priſoners as before were outlawed*] Perſons outlawed are *attainted* in law, and therefore are not bailable; for the intendment of the law is, that the perſon ſtandeth indifferent whether he be guilty or no; and not if he be convicted or attainted. 2 *Inſt.* 188.

2. *And they which have abjured the realm*] For theſe alſo are attainted upon their own confeſſion, and therefore not bailable at all by law. 2 *Inſt.* 188.

3. *Provors*] A provor, or *approver*, is a perſon that confeſſeth the felony with which he is charged, and undertakes to *prove* another guilty of the ſame crime; which if he does, he ſaves his own life, otherwiſe he ſhall be immediately executed. And the reaſon why they are not bailable is, becauſe they are guilty by their own confeſſion, and therefore they do not ſtand indifferent. 2 *Inſt.* 188.

But this concerns not juſtices of the peace, becauſe no man can become an approver before them, for that they cannot aſſign a coroner. *Hale's Pl.* 102.

4. *And ſuch as be taken with the manner*] For in this caſe likewiſe, he ſtandeth not indifferent whether he be guilty or no, being taken with the *mainer*, that is, with the thing ſtolen as it were in his *hand*, anciently called *handhabbend*, and the like was anciently called

called *backberend*, as a bundle or fardle at his *back*; which was uſed to ſignify manifeſt theft. 2 *Inſt.* 188.

5. *And thoſe which have broken the king's priſon*] Here are two offences; firſt, his breaking of the priſon, for it is preſumed that he who is innocent will never break priſon: and ſecondly, his flying, becauſe he confeſſeth the fact who flies from judgment. 2 *Inſt.* 188.

6. *Thieves openly defamed and known*] Who, as it ſeems, ought not to be bailed for any freſh felony, whereof there is probable evidence againſt them. But this ſeems in a great meaſure to be left to the diſcretion of the perſon who has power to bail them, who on conſideration of the circumſtances of the whole matter, and the probabilities on both ſides, if he finds it reaſonable ſtrongly to preſume them to be guilty, ought not to bail but commit them. 2 *Haw.* 99.

7. *Such as be appealed by provors, ſo long as the provors be living, if they be not of good fame*] The appeal of the approver is forcible againſt the appellee, becauſe the approver confeſſeth himſelf guilty of the ſame felony, and therefore it ſerveth in nature of an indictment againſt the appellee, ſo long as the approver liveth, unleſs the appellee be of good fame. 2 *Inſt.* 188.

8. *And ſuch as be taken for houſeburning feloniouſly done*] This was felony by the common law. 2 *Inſt.* 188.

9. *Or for falſe money*] This was treaſon by the common law. 2 *Inſt.* 188.

10. *Or for counterfeiting the king's ſeal*] This was alſo treaſon by the common law. 2 *Inſt.* 188.

11. *Or perſons excommunicate, taken at the requeſt of the biſhop*] That is, he that is certified into the chancery by the biſhop to be excommunicated, and after is taken by force of the king's writ of *excommunicato capiendo*, is not bailable: For in ancient time men were excommunicated but for hereſies, or other heinous cauſes of eccleſiaſtical cognizance, and not for ſmall or petty cauſes; and therefore in thoſe caſes the party was not bailable by the ſheriff or gaoler without the king's writ; but if the party offered ſufficient caution *de parendo mandatis eccleſiae in forma juris*, then ſhould the party have the king's writ to the biſhop to accept his caution, and to cauſe him to be delivered: And if the biſhop will not ſend to the ſheriff to deliver him, then ſhall he have a writ out of the chancery to the ſheriff for his delivery: Or if he be excommunicated for a temporal cauſe, or for a matter whereof the eccleſiaſtical court hath no cognizance, he ſhall be delivered by the king's writ without any ſatisfaction. 2 *Inſt.* 189.

12. *For manifeſt offences*] Which ſeems to be underſtood of inferior crimes of an enormous nature under the degree of felony; as dangerous riots, exorbitant reſcouſes, miſpriſion of treaſon, *præmunire*, and ſuch like heinous offences. Yet it ſeems to be in a great meaſure left to diſcretion, to judge in what caſes their crime

crime is ſo flagrant and enormous, that they ought not to have the benefit of it. 2 *Haw.* 99.

13. *Or for treaſon touching the king himſelf*] By the common law, a man accuſed or indicted of high treaſon, or of any felony whatſoever, was bailable upon good ſurety, until he were convicted; for at common law, the gaol was his pledge or ſurety, that could find none. 2 *Inſt.* 189.

Shall be in no wiſe repleviſable by the common writ, nor without writ] That is, the ſheriff ſhall not replevy them by the common writ *de homine replegiando*, nor without writ, that is, *ex officio*: But all or any of theſe may be bailed in the king's bench. 2 *Inſt.* 189.

Next the act ſetteth down ſeven kinds of offenders that may be bailed:

1. *Such as be indicted of larceny by inqueſts taken before ſheriffs or bailiffs*] That is, before ſheriffs in their torns, or lords in their leets, or thoſe that have *infangthief* and *outfangthief*. Yet this is expounded that they be of good fame. 2 *Inſt.* 190.

2. *Or of light ſuſpicion*] But if the preſumption be ſtrong, or the defamation great, the juſtices may refuſe to bail him. *Hale's Pl.* 102. And this is expounded alſo that they be of good fame. 2 *Inſt.* 190.

3. *Or for petit larceny that amounteth not above the value of* 12*d. if they were not guilty of ſome other larceny aforetime*] This act divideth larceny into two kinds; grand larceny, when the thing ſtolen is above the value of 12*d.* and petit larceny, when it is of the value of 12*d.* or under. 2 *Inſt.* 189.

And it ſeems to be agreed, that there is no neceſſity that ſuch perſons be of good fame; yet upon the conſtruction of the whole ſtatute, if ſuch perſons be taken with the manner, or confeſs the fact, or their crime be otherwiſe open and manifeſt, it ſeems that they ought not to be bailed; but if there be any colour of probability for their innocence, it ſeems moſt agreeable to the intention of the ſtatute to bail them. 2 *Haw.* 101.

4. *Or guilty of receipt of felons*] Theſe are acceſſaries after the fact. 2 *H. H.* 100.

5. *Or of commandment, or force, or of aid in felony done*] Theſe are acceſſaries before the fact. 2 *H. H.* 100.

But acceſſaries to felonies are not to be bailed, unleſs they be of good reputation: And it ſeems at this day to be ſettled, that where there are ſtrong preſumptions of guilt, ſuch acceſſaries are not bailable by this ſtatute. 2 *Haw.* 102.

6. *Or guilty of ſome other treſpaſs, for which one ought not to loſe life nor member*] But it ſeems reaſonable to qualify the generality of this expreſſion, with this limitation, that ſuch accuſation ought to be either on a light ſuſpicion, or elſe that the offence be inconſiderable, or that it be not excluded from bail by ſome ſpecial act of parliament. 2 *Haw.* 99. 2 *H. H.* 135.

7. *And a man appealed by a provor, after the death of the provor, if he be no common thief, nor defamed*] And by parity of reaſon, he may be bailed, if the approver waive his appeal, or be vanquiſhed. 2 *Haw.* 98.

Be let out by ſufficient ſurety] If a juſtice take inſufficient ſurety, and the party appear not, he is finable by the judge of aſſize. *H. P.* 97. But if the priſoner appear thereupon, the juſtice is ſafe. 2 *Haw.* 89.

And if a perſon who has power to take bail, be ſo far impoſed upon, as to ſuffer a priſoner to be bailed by inſufficient perſons, it is ſaid, that either he, or any other perſon who hath power to bail him, may require the party to find better ſureties, and to enter into a new recognizance with them, and may commit him on his refuſal, for that inſufficient ſureties are no ſureties. 2 *Haw.* 89.

And the perſon who is to take the bail, may examine them on their oaths concerning their ſufficiency. 2 *Haw.* 89. 2 *H. H.* 125.

It is to be obſerved, that the aboveſaid ſtatute extends only to bail in criminal offences, and therefore gives no power at all to juſtices of the peace to bail any perſons on proceſs in civil actions, or for contempts to ſuperior courts. 2 *Haw.* 106.

There are furthermore many ſtatutes, which prohibit bail and mainpriſe in very many caſes, and allow the ſame in many others, which are interſperſed among the ſeveral titles which treat of thoſe matters.

And where a ſtatute ordaineth, that an offender ſhall be impriſoned at the king's will or pleaſure, there the priſoner cannot be bailed, till he hath redeemed his liberty by ſuch fine or ranſom as ſhall be aſſeſſed by the king's juſtices in his courts. *Dalt. c.* 167.

Altho' a perſon be committed to be detained without bail or mainpriſe, yet if the offence be by law bailable, he that hath power of bailing may bail him. 2 *H. H.* 135.

V. Who may bail, and the manner of it.

By the common law, the ſheriff and every conſtable, being conſervators of the peace, might have bailed one ſuſpected of felony; but this authority is transferred from them to the juſtices of the peace by the ſeveral ſtatutes. *Lamb.* 1/5.

And it ſeems to be a good general rule, that ſo far as any perſons are judges of any crime, ſo far they have power of bailing a perſon indicted before them of ſuch crime: And upon this ground it ſeems clear, that any two juſtices (1 *Q.*) may of common right bail perſons indicted at the ſeſſions, for that any two ſuch juſtices may hear and determine the indictment. Alſo it hath been holden, that any one juſtice hath the like power; and this ſeems to be implied by the ſtatute of 1 *R.* 3. *c.* 3. which giving one juſtice power of bailing perſons arreſted for felony, *in like form as if ſuch perſons had been indicted at the ſeſſions*, clearly ſuppoſes, that if ſuch perſons had been indicted at the ſeſſions, they might have been bailed by any one juſtice. And if any one juſtice had ſuch power,

before the ſtatutes ſpecially relating to the power of juſtices in granting bail, it ſeems that he hath ſtill the ſame power in relation to perſons ſo indicted of any bailable crime under the degree of *felony*, becauſe the ſaid ſtatutes ſeem not to reſtrain him in any ſuch caſe, under the degree of felony, from any power which he lawfully might claim before. 2 *Haw.* 103.

But it ſeems difficult to maintain the power of one juſtice to bail a perſon, for any crime *before* indictment, unleſs by ſome ſtatute it be limited to the conuſance of one juſtice, or unleſs it be an offence directly tending to the breach of the peace, the bailing of perſons for which ſeems properly to come under their conuſance as conſervators of the peace. 2 *Haw.* 105.

And Mr. *Dalton* ſays, if it is not in caſe of felony, it ſeemeth that any one juſtice alone may bail a priſoner, except where it is otherwiſe ordered in particular inſtances by ſome ſpecial ſtatute. *Dalt. c.* 12.

And it ſeems to be agreed, that any one juſtice might always in his diſcretion either bail or impriſon one who has given another a dangerous wound, according as it ſhall appear from the whole circumſtances that the party is moſt likely to live or die; for that every ſuch juſtice being a principal conſervator of the peace, the offence at preſent being only an enormous breach thereof, and no felony, ſeems properly to come under his conuſance. 2 *Haw.* 103.

But by 1 & 2 *P. & M. c.* 13. *If a perſon be arreſted for* manſlaughter, *or* felony, *or* ſuſpicion thereof, *being bailable by law, he ſhall not be let to bail or mainpriſe by any juſtices, but in open ſeſſions, except it be by two juſtices at the leaſt* (1 Q.), *and the ſame to be preſent together at the time of the ſaid bailment: Which bail they ſhall certify in writing ſubſcribed or ſigned with their own hands, at the next general gaol delivery to be holden within the county where the perſon ſhall be arreſted or ſuſpected.*

And the ſaid juſtices, or one of them, being of the Quorum, *when any ſuch priſoner is brought before them, for any manſlaughter or felony, before any bailment, ſhall take the examination of the ſaid priſoner, and information of them that bring him, of the fact and circumſtances thereof, and the ſame or as much thereof as ſhall be material to prove the felony, ſhall put in writing before they make the bailment: Which examination together with the bailment, the ſaid juſtices ſhall certify at the next general gaol delivery to be holden within the limits of their commiſſion.*

And the ſaid juſtices ſhall have power to bind all ſuch by recognizance as do declare any thing material to prove the offence, to appear at the next general gaol delivery, to give evidence againſt the party on his trial: And ſhall certify the ſame in like manner.

And any juſtice offending contrary to this act, ſhall on due proof by examination, be fined by the judges of aſſize.

But in London, Middleſex, *and in other cities and towns corporate, juſtices may let priſoners to bail, as they might before this act; but when they do bail, they are to take and certify the bail and examination as is here directed.*

VI. Requiring exceſſive bail.

By the declaration of rights 1 *W. ſeſſ.* 2. *c.* 2. Exceſſive bail ought not to be required.

VII. Denying bail where it ought to be granted.

To refuſe bail where the party ought to be bailed (the party offering the ſame) is a miſdemeanor puniſhable not only by the ſuit of the party, but alſo by indictment. 2 *Haw.* 90. *H. P.* 97.

VIII. Granting bail where it ought to be denied.

Admitting bail where it ought not, is puniſhable by the judges of aſſize by fine; or puniſhable as a negligent eſcape at common law. *H. P.* 97.

If the keeper of a priſon bail any not bailable, he ſhall loſe his fee and office; if another officer, he ſhall have three years impriſonment, and make fine at the king's pleaſure. 3 *Ed.* 1. *c.* 15.

M. 18 *G.* 2. *K.* and *William Clarke*, eſquire. He as a juſtice of *Surrey* committed a man on ſuſpicion of ſtealing a mare, and bound over the owner to proſecute. Afterwards upon examining two other perſons, he admitted the party to bail. The proſecutor appeared at the aſſizes, and found a bill, but the party accuſed did not appear. And the court granted an information againſt the juſtice, declaring they ſhould not have bailed the man themſelves. *Str.* 1216.

IX. Of bail by writ of habeas corpus.

If bail cannot otherwiſe be obtained, the law hath provided a remedy in moſt caſes by the *habeas corpus* act 31 *C.* 2. *c.* 2. The ſubſtance of which is briefly thus:

If the commitment is for treaſon or felony, plainly and ſpecially expreſſed in the warrant of commitment; alſo if any perſon is committed and charged as acceſſary before the fact to any petty treaſon or felony, or upon ſuſpicion thereof, or with ſuſpicion of petty treaſon or felony, which petty treaſon or felony ſhall be plainly and ſpecially expreſſed in the warrant of commitment: In ſuch caſes the perſon ſhall not be bailed on a writ of habeas corpus; *otherwiſe he may be bailed.*

Alſo if a perſon is committed for treaſon or felony ſpecially expreſſed, yet if he ſhall in open court the firſt week of the term, or firſt day of aſſize, petition to be tried, and ſhall not be indicted ſometime in the next term or aſſize after the commitment, he ſhall upon motion the laſt day of the term or aſſize, be bailed, unleſs it ſhall appear to the judge upon oath that the king's witneſſes could not be produced within that time, and then if he is not tried in the ſecond term or aſſize, he ſhall be diſcharged.

Previous to the aforeſaid bailment, the priſoner or ſome perſon on his behalf, ſhall demand of the officer or keeper, a true copy of the warrant

warrant of commitment, which he ſhall deliver in ſix hours, on pain of 100l. *to the party grieved, for the firſt offence, and* 200l. *and forfeiture of his office for the ſecond.*

Then application is to be made in writing, by the priſoner or any perſon for him, atteſted and ſubſcribed by two witneſſes who were preſent at the delivery thereof, to the court of chancery, king's bench, common pleas, or exchequer, or if out of term time, to the lord chancellor or one of the judges; and a copy of the warrant of commitment ſhall be produced before them, or oath made that ſuch copy was denied.

But if any perſon hath wilfully neglected by the ſpace of two terms to apply for his enlargement, he ſhall not have a habeas corpus *granted in the vacation.*

This being done, the lord chancellor, or judges reſpectively, ſhall award an habeas corpus *under the ſeal of the court, on pain of* 500l. *to be marked in this manner,* Per ſtatutum triceſimo primo Caroli ſecundi Regis, *and ſigned by the perſon that awards the ſame; and ſhall be directed to the officer or keeper, returnable* immediate.

And the charges of bringing the priſoner ſhall be aſcertained by the judge or court that awarded the writ, and indorſed thereon, not exceeding 12d. *a mile.*

Then the writ ſhall be ſerved on the keeper, or left at the gaol with any of the under officers; and the charges ſo indorſed, ſhall be paid or tendered to him, and the priſoner ſhall give bond to pay the charges of carrying him back if he ſhall be remanded, and that he will not make any eſcape by the way.

This done, the officer ſhall within three days after ſervice (if it is within twenty miles) return the writ, and bring the body, and ſhall then likewiſe certify the true cauſe of the impriſonment; if above twenty miles, and leſs than an hundred, then within ten days; if above an hundred, then within twenty days; on like pain as before.

But after the aſſizes are proclaimed for the county where the priſoner is detained, he ſhall not be removed.

Then if it ſhall appear to the ſaid lord chancellor or judges, that the priſoner is detained on a legal proceſs, order, or warrant, out of ſome court that hath juriſdiction of criminal matters, or by warrant of a judge or juſtice of the peace for matters for the which by law he is not bailable; in ſuch caſe the priſoner ſhall not be diſcharged.

If he ſhall be diſcharged, he ſhall thereupon enter into recognizance to appear on his trial; and the writ, and return thereof, and recognizance ſhall be certified into the court where the trial muſt be.

But perſons charged in debt, or other action, or with proceſs in any civil cauſe, after their diſcharge for a criminal offence, ſhall be kept in cuſtody for ſuch other ſuit.

And perſons ſo ſet at large, ſhall not be re-committed for the ſame offence, unleſs by order of court; on pain of 500l. *to the party grieved.*

Two things I ſhall obſerve upon this ſtatute:

1. That altho' the conſtable by his own authority, without any warrant of commitment, may carry an offender to gaol, and this

was the method of ſecuring priſoners, before that there were any juſtices of the peace; yet ſince the inſtitution of that magiſtrate, it is better that they be carried before him, to be ſent by him to gaol by warrant of commitment; otherwiſe they have a right to be bailed upon this act, whatever the offence may be.

2. That the warrant of commitment ought to ſet forth the cauſe ſpecially; that is to ſay, not for treaſon or felony in general, but treaſon *for counterfeiting the king's coin*, or felony *for ſtealing the goods of ſuch a one to ſuch a value*, and the like; that ſo the court may judge thereupon, whether or no the offence is ſuch, for which a priſoner ought to be admitted to bail.

X. Acknowledging bail in another man's name.

By the 21 *J. c.* 26. *If any perſon ſhall acknowledge, or procure to be acknowledged, any bail in the name of any other not privy to the ſame; he ſhall be guilty of felony without benefit of clergy.*

In the name of any other] *T.* 6 *G.* Two people put in bail in feigned names, and becauſe there were no ſuch perſons, they could not be proſecuted for perſonating bail on this ſtatute. So the court ordered them and the attorney to be ſet in the pillory, which was done accordingly. *Str.* 384.

Bail taken before a judge is not within this ſtatute, till it be filed of record. 1 *H. H.* 696. But it is within the following ſtatute of 4 *W. c.* 4. by which it is enacted, that *any who ſhall perſonate another before thoſe who have authority to take bail, ſo as to make him liable to the payment of any ſum of money in that ſuit or action, ſhall be guilty of felony* (but within clergy).

Form of bail.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. O. *of* ——— *yeoman*, A. B. *of* ——— *yeoman, and* B. B. *of* ——— *yeoman, came before us* John Moore, *eſquire, and* Richard Burn, *clerk, two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* Quorum, *and ſeverally acknowledged themſelves to owe to our ſaid lord the king, that is to ſay, the ſaid* A. O. 20l. *and the ſaid* A. B. *and* B. B. 10l. *each, to be reſpectively levied of their lands and tenements, goods and chattels, if the ſaid* A. O. *ſhall make default in the performance of the condition indorſed,* [or, *underwritten*].

John Moore,
Richard Burn.

The condition of this recognizance is ſuch, that if the within [*above*] *bound* A. O. *ſhall perſonally appear before the juſtices of our ſovereign lord the king aſſigned to keep the peace within the ſaid county, and likewiſe to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at the next general quarter ſeſſions of the peace* [or, *before his majeſty's juſtices of*

gaol

gaol delivery, at the next general gaol delivery] *to be holden in and for the ſaid county, then and there to anſwer to our ſaid ſovereign lord the king, for and concerning the felonious taking and ſtealing of* ——— *the property of* A. M. *of* ——— *yeoman, with the ſuſpicion whereof the ſaid* A. O. *ſtands charged before us the ſaid juſtices, and to do and receive what ſhall by the court be then and there enjoined him, and ſhall not depart the court without licence, then the above* [*within*] *written recognizance ſhall be void.*

Or if the party is in priſon, and ſo abſent, Lord *Hale* ſays, this is the true form from *Lambard.*

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *before us* John Moore, *eſquire, and* Richard Burn, *clerk, two of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and one of us of the* Quorum, *at* Grimeſhill *in the ſaid county, did come* A. B. *and* B. B. *of* ——— *in the ſaid county, yeoman, and took in bail until the next gaol delivery to be holden in the ſaid county, one* A. O. *of* ——— *labourer, taken and detained in priſon for ſuſpicion of a certain felony in ſtealing* ——— *the property of* ——— *and took upon themſelves each of the ſaid* A. B. *and* B. B. *under the penalty of* 20*l. of good and lawful money of* Great Britain, *of the goods and chattels, lands and tenements, of them and each of them, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, to be levied, if the ſaid* A. O. *ſhall not perſonally appear at the ſaid next gaol delivery, before the juſtices of our ſaid lord the king, aſſigned to deliver the ſaid gaol, to ſtand to right concerning the felony aforeſaid, according to the law and cuſtom of* England. *Given under our ſeals* &c.

But the ſeal need not be, for they are judges of record; only it may be barely ſubſcribed by them: or thus,

Taken and acknowledged the day and year abovewritten, before us the aboveſaid

John Moore,
Ri. Burn.

And hereupon a warrant iſſues for his deliverance, thus:

Weſtmorland. JOHN Moore, *eſquire, and* Richard Burn, *clerk, two of the juſtices of* ——— *and one of us of the* Quorum, *To the keeper of his majeſty's gaol at* ——— *in the ſaid county, greeting. Foraſmuch as* A. O. ——— *labourer, hath before us found ſufficient ſureties to appear before the juſtices of gaol delivery at the next general gaol delivery to be holden in the ſaid county, to anſwer to ſuch things as ſhall be then on the behalf of our ſaid ſovereign lord objected againſt him, and namely, to the felonious taking of* ——— (*for the ſuſpicion whereof he was taken,*

and committed to your ſaid gaol); *We command you on the behalf of our ſaid ſovereign lord, that if the ſaid* A. O. *do remain in your ſaid gaol for the ſaid cauſe, and for none other, then you forbear to detain him any longer, but that you deliver him thence, and ſuffer him to go at large, and that upon the pain that will thereon enſue. Given under our ſeals at* Orton *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———.

Lord *Hale* ſays, the advantage of this latter kind of bail is this, that it is not only a recognizance in a ſum certain, but alſo a real bail, and they are his keepers, and may be puniſhed by fine beyond the ſum mentioned in the recognizance, if there be cauſe; and may reſeize him if they doubt his eſcape, and have him committed, and ſo be diſcharged of the recognizance.

Bailiff. See **Sheriff.**

Baker. See **Bread.**

Banks deſtroying.

Powdike.

1. EVERY perverſe and malicious cutting down and breaking up of any part of the dike called new *Powdike* in *Marſhland* in the county of *Norfolk*, and the broken dike called *Old field dike* by *Marſhland* in the iſle of *Ely*, or of any other bank being parcel of the rind and uppermoſt part of the ſaid country of *Marſhland*, made for the defence and ſalvation of the ſaid country of *Marſhland*, ſhall be adjudged felony. And the ſeſſions may determine the ſame. 22 *H.* 8. *c.* 11.

Sea and river banks.

2. By a clauſe in the ſtatute of 6 *G.* 2. *c.* 37. *ſ.* 5. which clauſe by a ſubſequent act of 10 *G.* 2. *c.* 32. *ſ.* 4. is incorporated with the act, commonly called the *Black act* (9 *G.* *c.* 22.) and which has continuance to *Sep.* 1. 1757, *&c.* If any perſon (during the continuance of the ſaid act) ſhall unlawfully and maliciouſly break down or cut down the bank of any river, or any ſea bank, whereby any lands ſhall be overflowed or damaged; he ſhall be guilty of felony without benefit of clergy.

And the hundred ſhall make ſatisfaction for the damages, not exceeding 200 *l.* as may be ſeen more at large under the title **Black act.**

Piles for ſecuring banks.

3. And moreover, by the ſtatute of 10 *G.* 2. *c.* 32. *ſ.* 5. If any perſon ſhall unlawfully cut off, draw up, or remove and carry away any piles, chalk, or other materials, driven into the ground, and uſed for the ſecuring any marſh or ſea walls, or banks, in order to prevent the lands lying within the ſame from being overflowed and damaged; on complaint or information thereof made upon oath to any juſtice reſiding near the place, ſuch juſtice ſhall ſummon the party complained of, or ſhall iſſue his warrant to apprehend and bring ſuch perſon before him; and upon his appearance,

pearance, or neglect to appear, he ſhall proceed to examine the fact, and upon due proof thereof made either by confeſſion, or oath of one witneſs, ſhall convict the offender; who ſhall thereupon forfeit 20 *l.* half to the informer, and half to the overſeer for the uſe of the poor, to be levied by diſtreſs and ſale: For want of ſufficient diſtreſs, to be committed to the houſe of correction, to be kept to hard labour for ſix months.

Bankrupt.

1. LORD *Coke* ſays, that *banque* in *French* ſignifies the ſame as *menſa* in *Latin*; and that *route* is a ſign or mark, as we ſay a cart route is the ſign or mark where the cart hath gone; and that metaphorically a *bankrupt*, or *banqueroute*, is taken for him, that hath waſted his eſtate, and removed his banque ſo as there is left but a mention thereof. 4 *Inſt.* 277. Derivation.

But as the firſt bankers to us came from *Italy*, it ſeemeth more probable that they brought their name along with them; and conſequently that the word *bankrupt* or *banqeroute* cometh from the Italian *banco rotto*, the *bench* being *broken*. The *banker* himſelf was ſo called from the *bench* or table which he uſed, with his name inſcribed, and when he failed, his bench was broken. Which word *rotto* is what remaineth in that country of the Latin *ruptus*; all which, both word and metaphor, we preſerve in our language, when we ſay that a perſon is *bankrupt*, or that ſuch a one is broken.

2. The deſcription of a bankrupt, within the ſeveral ſtatutes brought together into one view, ſeemeth to be as follows: *Every perſon uſing the trade of merchandize, by way of bargaining, exchange, bartry, chevi ſance, or otherwiſe, in groſs, or by retail, or ſeeking his trade of living by buying and ſelling, or that ſhall uſe the trade or profeſſion of a ſcrivener receiving other mens monies or eſtates into his truſt or cuſtody, who ſhall* (1) *depart the realm*; *or* (2) *begin to keep his houſe, or otherwiſe to abſent himſelf*; *or* (3) *take ſanctuary*; *or* (4) *ſuffer himſelf willingly to be arreſted for any debt or other thing not grown or due for money delivered, wares ſold, or any other juſt or lawful cauſe or good conſideration or purpoſes*; *or* (5) *ſhall ſuffer himſelf to be outlawed*; *or* (6) *yield himſelf to priſon*; *or* (7) *willingly or fraudulently ſhall procure himſelf to be arreſted, or his goods to be attached or ſequeſtred*; *or* (8) *depart from his dwelling houſe*; *or* (9) *make any fraudulent grant or conveyance of his lands or goods, to the intent or whereby his creditors ſhall and may be defeated or delayed for the recovery of their juſt debts*; *or* (10) *ſhall obtain any protection, other than ſuch perſon as ſhall be lawfully protected by privilege of parliament*; *or* (11) *ſhall prefer to any court any petition or bill againſt any of his creditors, thereby endeavouring to inforce them to accept leſs than their juſt debts, or to procure time, or longer days of payment than was given at the time of their original contracts*; *or* (12) *being arreſted for debt,* Deſcription of a bankrupt.

ſhall lie in priſon two months; or (13) *being arreſted for* 100 l. *or more, ſhall eſcape out of priſon,——ſhall be adjudged a bankrupt; (and in the ſaid caſes of arreſt, or lying in priſon, from the time of his firſt arreſt.)* 1 J. c. 15. ſ. 2. 21 J. c. 19. ſ. 2, 15. 10 An. c. 15. ſ. 1.

Uſing the trade of merchandize] But no perſon who ſhall adventure any money in the *Eaſt-India* company, and ſhall receive his dividend in merchandize, and ſhall ſell or exchange the ſame, ſhall be judged thereby a merchant or trader without any ſtatute for bankrupts. 13 & 14 C. 2. c. 24. ſ. 3, 4.

Seeking his trade of living by buying and ſelling] He that buys only, or ſells only, is not within this deſcription. *Read. Bankr.*

Alſo no farmer, grazier, or drover of cattle, ſhall be deemed a bankrupt. 5 G. 2. c. 30. ſ. 40.

Alſo an innkeeper is ſaid not to be a trader within theſe ſtatutes. 1 *Salk.* 110.

It is likewiſe held, that a taylor is not within the ſtatutes of bankrutcy, becauſe he gets not his living by buying and ſelling; but ſhoemakers, weavers, dyers, tanners, and bakers have been held to be within the ſaid ſtatutes. *Read. Bankr.*

Moreover, ſuch farmer, if he ſhall deal in wool, hops, or the like, ſhall be deemed a bankrupt; otherwiſe any perſon by taking a farm, might avoid the ſtatutes. Alſo, an innkeper, if he ſhall buy corn, and ſell the ſame, again in quantities which are not conſumed in his houſe, may become a bankrupt. And in the caſe of *Mayo* and *Archer*, E. 8 G. A farmer who planted potatoes, but withal bought divers large quantities of potatoes, and ſold the ſame again, was adjudged a bankrupt. *Strange* 513.

Receiving other mens monies or eſtates into his truſt or cuſtody] Bankers, brokers, and factors are within this deſcription. 5 G. 2. c. 30. ſ. 39.

But no receiver general of any taxes granted by act of parliament, ſhall be deemed a bankrupt. 5 G. 2. c. 30. ſ. 40.

For what debts a commiſſion ſhall be iſſued, and what is to be done previous thereto.

3. But notwithſtanding that a perſon may have committed any of the aboveſaid acts of bankruptcy, yet nevertheleſs *no commiſſion of bankrupt ſhall be iſſued, on the petition of one or more creditors, unleſs the ſingle debt of ſuch creditor, or of two or more being partners, amount to* 100 l. *or of two ſuch creditors petitioning amount to* 150 l. *or of three or more to* 200 l.

And the creditor or creditors petitioning, ſhall before the commiſſion ſhall be granted, make affidavit before a maſter in chancery (to be filed with the proper officer) of the truth of the debt, and ſhall alſo give 200 *l.* bond to the lord chancellor for proving the debt as well before the commiſſioners, as upon a trial at law, if the due iſſuing of the commiſſion ſhall be conteſted, and alſo for proving the party a bankrupt, and further to proceed on ſuch commiſſion as hereafter is mentioned: and if it ſhall appear, that the commiſſion was taken out fraudulently, the lord chancellor may order ſatisfaction, and may aſſign ſuch bond to the party injured. 5 G. 2. c. 30. ſ. 23.

4. But

4. But theſe circumſtances abovementioned being obſerved, then the lord chancellor may on ſuch complaint in writing as aforeſaid, by commiſſion under the great ſeal, appoint ſuch wiſe and honeſt diſcreet perſons as to him ſhall ſeem good, to be commiſſioners. 13 *El. c.* 7. *ſ.* 2. Iſſuing the commiſſion.

5. Which commiſſioners, before they act, ſhall adminiſter to each other the following oath; "I *A. B.* do ſwear, that I will "faithfully, impartially, and honeſtly, according to the beſt of "my ſkill and knowledge, execute the ſeveral powers and truſts "repoſed in me as a commiſſioner in a commiſſion of bankrupt "againſt ——— and that without favour or affection, prejudice "or malice. So help me god." 5 *G.* 2. *c.* 30. *ſ.* 43. Commiſſioners oath.

And they ſhall keep a memorial thereof, ſigned by them, amongſt the proceedings. *id. ſ.* 44.

6. Then the commiſſioners ſhall cauſe notice of the commiſſion being iſſued to be given in the gazette, and likewiſe notice in writing to be left at the bankrupt's uſual place of abode, or perſonal notice to be given if he is in priſon; in which notice alſo ſhall be appointed a time and place of meeting of the commiſſioners, which meeting ſhall be at three ſeveral times within forty-two days, the laſt of which ſhall be on the forty-ſecond day; within which time the bankrupt ſhall ſurrender, and diſcover his eſtate and effects. 5 *G.* 2. *c.* 30. *ſ.* 1. Notice in the gazette of the commiſſion being iſſued.

But the lord chancellor may enlarge the time for ſuch ſurrender and diſcovery, not exceeding fifty days from the end of the ſaid forty-two days; ſo as ſuch order be made by him, ſix days before the expiration of the forty-two. *id. ſ.* 3.

7. The firſt meeting ſhall be for chuſing an aſſignee or aſſignees of the bankrupt's eſtate and effects (which in *London* ſhall be at *Guildhall*). 5 *G.* 2. *c.* 30. *ſ.* 26. Chuſing aſſignees.

8. But before aſſignees are choſen, the major part in value of the creditors may direct how and with whom the money to be received ſhall remain till divided; to which the aſſignees ſhall conform, as often as 100 *l.* ſhall be got in. 5 *G.* 2. *c.* 30. *ſ.* 32. The money with whom to be lodged.

9. And the creditor or creditors who ſhall ſue out the commiſſion, ſhall proſecute the ſame at their own expence till aſſignees be choſen; and the commiſſioners ſhall at the meeting for chuſing aſſignees, aſcertain ſuch coſts, and by writing under their hands order the aſſignees to reimburſe the ſame, out of the firſt effects that ſhall be got in. 5 *G.* 2. *c.* 30. *ſ.* 25. Expences of the commiſſion.

10. At the ſaid meeting for chuſing aſſignees, the commiſſioners ſhall admit the proof of any creditor's debt, that lives remote from the place of meeting, by affidavit; and alſo permit any perſon duly authorized by letter of attorney from ſuch creditors (oath being firſt made of the due execution thereof, either by affidavit ſworn before a maſter in chancery, or before the commiſſioners *viva voce*; and in caſe of creditors reſiding in foreign parts, ſuch affidavits to be made before a magiſtrate where the party ſhall be reſiding, and together with ſuch creditors letters of attorney, to be atteſted by a notary publick) to vote in the choice of an aſſignee or aſſignees in the place of ſuch creditor: And the commiſſioners ſhall aſſign the eſtate and effects unto ſuch perſon or perſons, Who ſhall vote for aſſignees.

ſons, as the major part in value of the creditors, according to the debts then proved, ſhall chooſe. 5 G. 2. c. 30. ſ. 26.

But no creditor ſhall ſo vote, whoſe debt ſhall not amount to 10 l. id. ſ. 27.

Chuſing new aſſignees.

11. And the commiſſioners may from time to time appoint new aſſignees, if the major part of the creditors, whoſe debts amount to 10 l. ſhall think fit; and the former aſſignees ſhall aſſign to them in ten days after notice of ſuch choice, and of the new aſſignees acceptance thereof, ſignified under their hands; on pain of 200 l. to the creditors, with full coſts. 5 G. 2. c. 30. ſ. 30.

And the lord chancellor, on petition of any creditors, may order former aſſignments to be vacated, and new aſſignments to be made, of the effects not received; and the commiſſioners ſhall cauſe notice thereof to be given in the two next gazettes, and that the debtors do not pay to the aſſignees removed. id. ſ. 31.

Bankrupt to be apprehended.

12. On certificate under the hands and ſeals of the commiſſioners, that ſuch commiſſion is iſſued, and ſuch perſon proved before them to become bankrupt, any judge or juſtice of the peace, ſhall on application to them for that purpoſe made, grant their warrant (A) for the taking and apprehending ſuch perſon, and commit (B) him to the common gaol, there to remain until he be removed by order of the commiſſioners by their warrant. And the gaoler ſhall forthwith give notice to one or more of the commiſſioners, of ſuch perſon being in his cuſtody; whereupon they ſhall ſend their warrant to him to deliver him to the perſon who ſhall be named in the warrant, who ſhall convey him to the commiſſioners to be examined. And the commiſſioners by ſuch or any other their warrant, may ſeize the goods and papers of ſuch bankrupt which ſhall be in any priſon (neceſſary wearing apparel of himſelf, and wife, and children excepted). 5 G. 2. c. 30. ſ. 14.

But if the perſon ſo apprehended ſhall, within the time allowed, ſubmit to be examined, and in all things conform, he ſhall have the ſame benefit as if he had ſurrendred. 5 G. 2. c. 30. ſ. 15.

Bankrupt to deliver up.

13. The bankrupt after aſſignees ſhall be appointed, ſhall deliver up to them on oath (to be adminiſtred by a maſter in chancery, or juſtice of the peace) all his books of account, papers, and writings not ſeized by the meſſenger of the commiſſion, and not before delivered up, and then in his power, and diſcover ſuch as are in the power of others; and, being not in cuſtody, ſhall at all times attend the aſſignees, on reaſonable notice given to him in writing, or left for him at his place of abode, in order to aſſiſt in making out the account of his eſtate. 5 G. 2. c. 30. ſ. 4.

Bankrupt to be at liberty to inſpect his papers.

14. And ſuch bankrupt having ſurrendred, ſhall at all ſeaſonable times, before expiration of the forty-two days, or further term, be at liberty to inſpect his papers, in preſence of the aſſignees, or ſome perſon appointed by them, and to bring with him for his aſſiſtance any perſons not exceeding two at a time, and to make extracts from thence, the better to enable him to diſcover his effects. 5 G. 2. c. 30. ſ. 5.

Shall be freed from arreſt.

And in order thereto, he ſhall be free from arreſt or impriſonment of his creditors, in coming to ſurrender, and from his ſurrender,

render, for the ſaid forty-two days or further term; provided he was not in cuſtody at the time of ſurrender. And if he be arreſted for debt, or on an eſcape warrant, coming to ſurrender, or after ſurrender within the ſaid term; then, on producing the notice under the hands of the commiſſioners or aſſignees, to the officer who ſhall arreſt him, and making it appear to ſuch officer that ſuch notice is ſigned by them, and giving the officer a copy thereof, he ſhall be immediately diſcharged: And if any officer ſhall in ſuch caſe detain him, he ſhall forfeit to him for his own uſe 5 *l.* a day, by action of debt, with full coſts. *id.*

Bankrupt in priſon when the commiſſion is iſſued.

15. And if the bankrupt be in priſon or cuſtody at the time of iſſuing the commiſſion and is willing to ſurrender and be examined, and can be brought before the commiſſioners and creditors, the expence thereof ſhall be paid out of his eſtate: But if he is in execution, or cannot be brought before the commiſſioners, then they ſhall attend him in priſon; and the aſſignees may appoint a perſon to attend him in priſon, and to produce to him his books and papers, in order to prepare his laſt diſcovery and examination; a copy whereof the aſſignees ſhall apply for, and the bankrupt ſhall deliver to them, ten days before ſuch laſt examination. 5 *G.* 2. *c.* 30. *ſ.* 6.

Bankrupt to be examined.

16. And the commiſſioners may examine him (on oath, 21 *J.* *c.* 19. *ſ.* 9.) *as well by word of mouth, as on interrogatories in writing*, touching his trade, dealings, eſtate, and effects; and take down in writing his anſwer to verbal examinations; which he ſhall ſign: And if he ſhall refuſe to anſwer, *or not anſwer fully* all lawful queſtions, or refuſe to ſign the ſame; the commiſſioners may by warrant commit him to priſon without bail, *till he ſhall ſubmit to them, and full anſwer make*, and ſign the ſame; which warrant ſhall ſpecify ſuch queſtions. 5 *G.* 2. *c.* 30. *ſ.* 16, 17.

As well by word of mouth, as on interrogatories in writing] *M.* 4 *G.* 2. *K.* and *Solomon Nathan.* The defendant was committed by the commiſſioners, who in their warrant recite, that he had been examined before them upon his oath, upon which examination he had notoriouſly prevaricated; they therefore commit him without bail or mainprize, until he ſhall make a full and true diſcloſure and diſcovery of his eſtate and effects, or be otherwiſe delivered by due courſe of law. Upon a *habeas corpus* it was moved, that the defendant might be diſcharged. One reaſon whereof was, becauſe the ſtatute requires, that there ſhall be interrogatories exhibited for his examination, that ſo he may have time to conſider of his anſwer, and it can then appear to the court, whether he is bound to anſwer: perhaps this prevarication might be in a matter they had no power to inquire into. And by the court; Interrogatories are a term known in law, and import that the queſtions are put in writing. And they ſaid that *Holt* Ch. J. held, that the bankrupt ought to have a copy, and time to conſider of his anſwer. *Strange* 880.

Or not anſwer fully] In the aforeſaid caſe of *K.* and *Solomon Nathan*, another objection againſt the commitment was, that they commit him, becauſe upon his examination he had *notoriouſly prevaricated*;

varicated; this being too looſe an expreſſion, for he might prevaricate, and yet give a full anſwer at laſt. And by the court; Where theſe ſpecial authorities are given, the words of the act ought to be purſued. *Strange* 880.

Till he ſhall ſubmit to them, and full anſwer make] In the ſame caſe, the commitment was, *until he ſhall make a full and true diſcloſure and diſcovery of his eſtate and effects, or be otherwiſe delivered by due courſe of law.* And by the court; This commitment not purſuing the words of the ſtatute, the priſoner muſt be diſcharged. *Strange* 880.

M. 8 *W. Bracy*'s caſe. A commitment *until he ſhould conform himſelf to their authority*, was adjudged ill, becauſe too general; ſince they have authority in other matters beſides that: and it is beſt in the like caſes, ſtrictly to purſue the ſtatute. L. *Raym.* 100.

Another commitment *till diſcharged by due courſe of law*, adjudged ill for the ſame reaſon. *id.* 851.

But if on an *habeas corpus* there appear inſufficiency in the warrant of commitment, the judge nevertheleſs ſhall commit him to the ſame priſon, to remain as aforeſaid, unleſs it be made appear that he hath fully anſwered all lawful queſtions, or unleſs it appear that he had ſufficient reaſon for not ſigning. 5 *G.* 2. *c.* 30. *ſ.* 18.

And if the gaoler ſhall ſuffer him to eſcape, or to go without the walls or doors of the priſon; he ſhall, on conviction by indictment or information, forfeit 500 *l.* to the creditors. *id.*

Alſo the gaoler ſhall, on requeſt of any creditor who ſhall have proved his debt, and producing a certificate thereof under the hands of the commiſſioners, produce and ſhew him to ſuch creditor; on pain of 100 *l.* to the creditors, by action of debt. *id.* *ſ.* 19.

Bankrupt not ſurrendring and conforming, felony.

17. And by the ſaid ſtatute it is enacted, that if he ſhall not within the ſaid time ſurrender himſelf to the commiſſioners, and ſign ſuch ſurrender, and alſo ſubmit to be examined from time to time on oath, and in all things conform to the ſtatutes concerning bankrupts, and alſo on his examination fully diſcover all his eſtate, and how diſpoſed of, except what hath been *bona fide* diſpoſed of in the way of his trade and dealings, and except what hath been laid out in the ordinary expence of his family, and alſo deliver up to them all his effects (except the neceſſary wearing apparel of himſelf, and wife, and children); then in caſe of any default and wilful omiſſion in not ſurrendring and ſubmitting to be examined, or in caſe he ſhall remove, conceal, or embezzle any part of his eſtate to the value of 20 *l.* or any books of account, or writings relating thereto, with intent to defraud his creditors, and being thereof convicted by indictment or information, he ſhall be guilty of felony without benefit of clergy, and his eſtate ſhall be divided amongſt his creditors. 5 *G.* 2. *c.* 30. *ſ.* 1.

And by the 20 *G.* 2. *c.* 52. All offences by bankrupts made felony by the ſeveral acts concerning bankruptcy, are excepted out of the general pardon.

18. And

18. And every perſon who ſhall accept any truſt, or conceal any eſtate of the bankrupt, and ſhall not in forty-two days after iſſuing the commiſſion, and notice thereof in the gazette, diſcover the ſame in writing to one or more commiſſioners or aſſignees, and ſubmit himſelf to be examined; ſhall forfeit to the creditors 100 *l.* and double value of the eſtate concealed, by action of debt, with full coſts. 5 *G.* 2. *c.* 30. *ſ.* 21. Other perſons concealing the bankrupt's effects.

19. Alſo the commiſſioners may examine on oath the bankrupt's wife, like as other perſons. 21 *J.* *c.* 19. *ſ.* 5, 6. Bankrupt's wife may be examined.

20. As alſo they may examine in like manner every other perſon, duly ſummoned before, or preſent at their meeting, touching the perſon, trade, dealings, eſtate, and effects of the bankrupt, and any acts of bankruptcy by him committed; and may take down in writing the anſwers of verbal examinations, which the party ſhall ſign: And if any of them ſhall refuſe to anſwer, or not anſwer fully all lawful queſtions, or refuſe to ſign the ſame, the commiſſioners may by warrant commit him to priſon without bail, till he ſhall ſubmit to them, and full anſwer make, and ſign the ſame; in like manner as is ſaid before in ſection the 16th concerning the bankrupt himſelf. 5 *G.* 2. *c.* 30. *ſ.* 16, 17, 18, 19. And every other perſon.

21. The ſaid commiſſioners ſhall have power, by their diſcretions to take ſuch order with the lands of ſuch bankrupt, as well copy or cuſtomary hold as freehold, which he had in his own right before he became a bankrupt; or which he purchaſed jointly with his wife or child to the only uſe of ſuch offender, or for ſuch uſe or intereſt as he may lawfully part with; or with any perſon of truſt to any ſecret uſe of ſuch offender; and alſo with all his money, goods, chattels, wares, merchandizes, and debts; and cauſe all the ſame to be ſearched and appraiſed to the beſt value they may; and the ſame to be ſold by deed indented, and inrolled in a court of record; or otherwiſe ordered for payment of the creditors, to every creditor a portion rate like, according to the quantity of his debts. 13 *El.* *c.* 7. *ſ.* 2. Bankrupt's eſtate how to be ordered.

And if any lands or goods ſhall deſcend or come to the bankrupt afterwards, before the debts be fully paid; the ſame ſhall be diſpoſed of in like manner. 13 *El.* *c.* 7. *ſ.* 11.

But this ſhall not extend to lands aſſured by ſuch perſon before he becomes bankrupt; provided the aſſurance be made *bona fide*, and not to his own uſe only, or of his heirs; and that the party to whoſe uſe they are aſſured, be not privy to the fraudulent purpoſe of the bankrupt to deceive his creditors. 13 *El.* *c.* 7. *ſ.* 12. Lands ſold bona fide.

Alſo the commiſſioners may by deed indented, and inrolled at *Weſtminſter* in ſix months, ſell the bankrupt's eſtate in tail, whereof no reverſion or remainder is in the king, or of the king's gift; which ſale ſhall be good againſt all perſons, whom the bankrupt by common recovery, or otherwiſe, might cut off. 21 *J.* *c.* 19. *ſ.* 12. Eſtate tail.

Alſo if the bankrupt hath conveyed any eſtate, on condition, or power of redemption, at a day to come, by payment of money, or otherwiſe; the commiſſioners before the time of the performance of ſuch condition, may appoint under their hands and ſeals any perſon to make tender or payment of money, or other performance, Eſtate mortgaged.

mance, as fully as the bankrupt might have done; and may diſpoſe of the eſtate redeemed for the uſe of the creditors, as fully as any other eſtate of the bankrupt. 21 *J.* *c.* 19 *ſ.* 13.

Cuſtomary lands to pay fine.

Perſons purchaſing copyhold or cuſtomary lands ſhall pay fine to the lord of the manor, who ſhall thereupon admit them. 13 *El.* *c.* 7. *ſ.* 4.

Commiſſioners may break open doors.

22. Commiſſioners and others by warrant under their hands and ſeals, may break open the bankrupt's houſes, doors, trunks, and cheſts, where he or any of his goods ſhall be reputed to be, and ſeize upon, and order his body and goods as before is ſaid. 21 *J.* *c.* 19. *ſ.* 8.

Bankrupt fraudulently conveying.

23. If the bankrupt ſhall convey to any of his children, or other perſon, any lands or goods, or transfer his debts into other mens names, except the ſame be conveyed or transferred on marriage of any of his children, or for ſome valuable conſideration; the ſame may be diſpoſed of in like manner. 1 *J.* *c.* 15. *ſ.* 5.

And if the bankrupt ſhall on his examination be found fraudulently to have conveyed his lands, goods, or eſtate, to the value of 20*l.* to defraud his creditors, and ſhall not diſcover the ſame, and (if it lie in his power) deliver the ſame to the commiſſioners; or if he cannot make it appear to the commiſſioners that he hath ſuſtained ſome caſual loſs whereby he is diſabled to pay what he oweth; he ſhall, on conviction upon indictment at the aſſizes or ſeſſions, be ſet on the pillory in ſome publick place for two hours, and have one of his ears nailed to the pillory, and cut off. 21 *J.* *c.* 19. *ſ.* 7.

Bankrupt compounding with the perſon ſuing out the commiſſion.

24. And if any bankrupt, after iſſuing the commiſſion, ſhall compound with the perſon ſuing out the ſame, for more than his proportion with the reſt of the creditors; ſuch commiſſion may be ſuperſeded, and the lord chancellor may award to any creditor petitioning another commiſſion, and the perſon ſo compounding ſhall loſe his whole debt, and deliver up to the new commiſſioners all he ſhall have ſo received, for the uſe of the other creditors. 5 *G.* 2. *c.* 30. *ſ.* 24.

Debtor paying to a bankrupt.

25. If a debtor to a bankrupt pays him voluntarily, he muſt pay it over again; but it is otherwiſe, if he pays him by compulſion of law. *Read. Bankr.*

Money received of a bankrupt.

26. But no real creditor of a bankrupt ſhall be liable to refund to the aſſignees, any money which before the ſuing forth the commiſſion was in courſe of trade received by him of the bankrupt, before he had knowledge of the perſon's becoming a bankrupt, or being inſolvent. 19 *G.* 2. *c.* 32. *ſ.* 1.

Purchaſer not to be impeached after five years.

27. And no purchaſer for valuable conſideration ſhall be impeached, unleſs the commiſſion be ſued out in five years after the perſon ſhall become bankrupt. 21 *J.* *c.* 19. *ſ.* 14.

Bankrupts conveying their goods, and keeping poſſeſſion.

28. If the bankrupt, at the time he ſhall become bankrupt, ſhall by conſent of the true owner, have in his poſſeſſion and diſpoſition any goods whereof he ſhall be reputed owner, and take upon him the ſale or diſpoſition thereof as owner; the commiſſioners may diſpoſe of the ſame, as fully as any other part of the bankrupt's eſtate. 21 *J.* *c.* 19 *ſ.* 11.

29. If

29. If any eſtate of the bankrupt be extended after he is become bankrupt, by any perſon under pretence of his being an accountant or indebted to the king; the commiſſioners may examine on oath, whether the ſaid debt were due to ſuch debtor or accountant, on any contract originally made between ſuch accountant and the bankrupt; and if it was made with any other perſon than the ſaid accountant, or for the uſe of any other perſon, the commiſſioners proceedings ſhall be available againſt the ſaid extent. 21 *J.* *c.* 19. *ſ.* 10. Debt due to the king.

30. The commiſſioners or aſſignees may ſtate accounts between the bankrupt and his debtors or creditors, and ſet one debt againſt another, and the balance only ſhall be paid on either ſide. 5 *G.* 2. *c.* 30. *ſ.* 28. Commiſſioners may ſtate accounts.

31. Alſo the aſſignees, with conſent of the major part in value of the creditors preſent at a meeting purſuant to notice to be given in the gazette, may ſubmit diſputes relating to the bankrupt's eſtate to arbitration; and may compound for debts owing to the bankrupt. 5 *G.* 2. *c.* 30. *ſ.* 34, 35. May refer to arbitration, and compound.

32. Two joint traders, one of them became a bankrupt: By *Holt* Ch. J. the commiſſioners cannot meddle with the intereſt of the other, for it is not affected by the bankruptcy of his companion. 3 *Salk.* 61. Partner not affected.

33. Every perſon who ſhall, after the time of ſurrender, voluntarily make diſcovery to the commiſſioners or aſſignees, of any part of the bankrupt's eſtate, not before come to the knowledge of the aſſignees, ſhall have 5 *l. per cent.* and ſuch further reward as the aſſignees and the major part of the creditors in value, preſent at any meeting, ſhall think fit. 5 *G.* 2. *c.* 30. *ſ.* 20. Reward for diſcovering.

34. Every creditor ſhall be at liberty to prove his debt, without paying any thing for the ſame. 5 *G.* 2. *c.* 30. *ſ.* 25. Creditor may prove his debt gratis.

35. And at the meeting for chuſing aſſignees, (as hath been ſaid) the commiſſioners ſhall admit the proof of any creditor's debt, that lives remote from the place of meeting, by *affidavit*. 5 *G.* 2. *c.* 30. *ſ.* 26. By affidavit.

36. Creditors having ſecurity by judgment, ſtatute, recognizance, ſpecialty with penalty or without, or other ſecurity, or having no ſecurity, or having made attachments in *London* or elſewhere by any cuſtom, of the goods of ſuch bankrupt, whereof there is no execution or extent ſerved and executed upon the lands, goods, or eſtate of ſuch bankrupt before he ſhall become bankrupt, ſhall not be relieved for more than a rateable part with the other creditors, notwithſtanding any penalty or greater ſum contained in ſuch ſecurity. 21 *J.* *c.* 19. *ſ.* 9. Perſons having ſecurity, to have only their ſhare.

37. Perſons taking ſecurities payable at a future day, for goods delivered to perſons who ſhall become bankrupts before the time of payment, ſhall be admitted to prove their ſecurities, and receive their proportion, deducting intereſt from the time of payment to the time it would have become due. 7 *G.* *c.* 31. *ſ.* 1, 2. Securities for money not become due.

38. The obligor in any bottom-ree, or *reſpondentia* bond, and the aſſured in a policy of inſurance, ſhall be admitted to claim; and after the loſs or contingency, to prove the debt thereon, in Bottom-ree inſurance.

like manner as if the ſame had happened before iſſuing the commiſſion. 19 *G.* 2. *c.* 32. *ſ.* 2.

Mortgagee. 39. The mortgagee may chuſe whether he will come in as a creditor. *Read. Bankr.*

Execution. 40. But the plaintiff that hath the defendant's body in execution, ſhall not come in to be relieved. *Read. Bankr.*

Swearing to a falſe debt. 41. If any perſon ſhall ſwear that any ſum is due to him from the bankrupt, which is not due, or more than is due; he ſhall ſuffer as in caſes of perjury, and moreover forfeit double to the creditors. 5 *G.* 2. *c.* 30. *ſ.* 29.

Aſſignees to keep books. 42. The aſſignees ſhall keep books of account of all ſums and effects received; which every creditor who hath proved his debt may inſpect at all ſeaſonable times. 5 *G.* 2. *c.* 30. *ſ.* 26.

Firſt dividend. 43. The aſſignees ſhall, after four months, and within twelve months after iſſuing the commiſſion, cauſe at leaſt twenty-one days notice to be given in the gazette, of the time and place the commiſſioners and aſſignees intend to meet to make a dividend; at which time, the creditors who have not before proved their debts, may prove them: and the aſſignees ſhall produce fair accounts, and be ſworn to them before the commiſſioners, if required by the creditors; and they ſhall be allowed therein all reaſonable expences. And the commiſſioners may then order, under their hands, a diſtribution; which order ſhall contain the time and place of making it, and the total of the debts proved, and of the money in the hands of the aſſignees, and how much in the pound ſhall be then diſtributed; one part of which order ſhall be filed among the proceedings under the commiſſion, and each of the aſſignees ſhall have a duplicate thereof. And the aſſignees ſhall take receipts for the ſame, in a book to be kept for that purpoſe. 5 *G.* 2. *c.* 30. *ſ.* 33.

Allowance to the bankrupt. 44. The bankrupt ſurrendring and conforming, ſhall be allowed 5 *l. per cent.* if after ſuch allowance, the neat produce of his eſtate will pay 10 *s.* in the pound; ſo as the ſaid 5 *l. per cent.* amount not to above 200 *l.* 5 *G.* 2. *c.* 30. *ſ.* 7.

And if the neat produce will pay 12 *s.* 6 *d.* in the pound; he ſhall be allowed 7 *l.* 10 *s. per cent.* ſo as it amount not to above 250 *l. id.*

And if it will pay 15 *s.* in the pound, he ſhall be allowed 10 *l. per cent.* ſo as it exceed not 300 *l.* and ſuch bankrupt ſhall be diſcharged from all debts by him owing at the time he became bankrupt: And if he ſhall be arreſted or proſecuted for any debt due before ſuch time, he ſhall be diſcharged on common bail, and may plead in general, that the cauſe of action did accrue before he became bankrupt, and may give this act, and the ſpecial matter in evidence; and the certificate of his conforming (as hereafter mentioned), and allowance thereof, ſhall be ſufficient evidence of the trading, bankruptcy, commiſſion, and other proceedings precedent to the obtaining the certificate; and a verdict ſhall paſs for the defendant, unleſs the plaintiff can prove that the certificate was obtained fraudulently, or can make appear a concealment by the bankrupt to the value of 10 *l.* And if the plaintiff is caſt, the defendant ſhall have full coſts. *id.*

But if any commiſſion of bankruptcy ſhall iſſue againſt any perſon who ſhall have been diſcharged by this act, or ſhall have compounded with his creditors, or delivered to them his eſtate, and been releaſed by them, or been diſcharged by an act of inſolvency; then the body only of ſuch perſon conforming ſhall be free from arreſt and impriſonment, but his future eſtate ſhall remain liable to his creditors (his tools of trade, neceſſary houſhold goods and furniture, and neceſſary wearing apparel of himſelf and wife and children only excepted), unleſs the eſtate of ſuch perſon ſhall produce clear of all charges 15 *s.* in the pound. *id. ſ.* 9.

If the neat produce will not pay 10 *s.* in the pound, the bankrupt ſhall be allowed ſo much as the aſſignees and commiſſioners ſhall think fit, not exceeding 3 *l. per cent.* *id. ſ.* 8.

45. But no diſcovery on oath ſhall intitle the bankrupt to the ſaid allowance, unleſs the commiſſioners ſhall, under their hands and ſeals, certify to the lord chancellor, that he hath made a full diſcovery of his eſtate, and in all things conformed himſelf; and that there doth not appear to them any reaſon to doubt of the truth of ſuch diſcovery, or that the ſame is not a full diſcovery; and unleſs four parts in five in number and value of the creditors, who ſhall be creditors for not leſs than 20 *l.* and who have proved their debts, or ſome perſon by them authorized thereto, ſhall ſign ſuch certificate, and teſtify their conſent to ſuch allowance and certificate, and to the bankrupt's diſcharge, to be alſo certified by the commiſſioners; but the commiſſioners ſhall not certify the ſame, till they have proof by affidavit of ſuch creditors, or of the perſon by them reſpectively authorized, ſigning the ſaid certificate, and of the power by which any perſon is ſo authorized (and the letter of attorney of a creditor reſiding in foreign parts, atteſted by a notary publick, ſhall be ſufficient evidence in ſuch caſe of ſuch power, 24 *G.* 2. *c.* 57. *ſ.* 10.) Which ſaid affidavit, together with ſuch power to ſign, ſhall be laid before the lord chancellor with the certificate in order for allowing the ſame;—and unleſs the bankrupt make oath, that the certificate and conſent of the creditors were obtained fairly and without fraud; and unleſs the certificate ſhall, after ſuch oath, be allowed and confirmed by the lord chancellor, or two of the judges to whom he ſhall refer it: and any of the creditors ſhall be allowed to be heard againſt making the certificate, and againſt the confirmation of it: nor ſhall any commiſſioner ſign the certificate, till after four parts in five in number and value of the creditors ſhall have ſigned it. 5 *G.* 2. *c.* 30. *ſ.* 10. Certificate and allowance thereof.

And every ſecurity given to the uſe of any creditor, to induce him to ſign ſuch allowance or certificate, ſhall be void. *id. ſ.* 11.

Moreover, no bankrupt ſhall be intitled to ſuch allowance, who hath upon marriage of any child given above 100 *l.* unleſs he prove by his books, or upon his oath, that he had remaining at the time ſufficient to pay his debts; or who hath loſt in one day the value of 5 *l.* or in the whole the value of 100 *l.* in 12 months next before his becoming bankrupt, at cards, dice, tables, tennis, bowls, billiards, ſhovelboard, cock-fighting, horſe-

races, dog-matches, foot-races, or other paſtime or game, or in bearing a part in the ſtakes, or by betting; or hath in 12 months before loſt 100*l.* by contracts for the ſtock of any company, or publick funds, where the contract was not to be performed within a week, or where the ſtock was not actually transferred. 5 G. 2. *c.* 30. *ſ.* 12.

And moreover, by 24 G. 2. *c.* 57. When any perſon ſhall fraudulently ſwear, before the major part of the commiſſioners, or by affidavit exhibited to them, that a ſum of money is due to him from the bankrupt, which ſhall in fact not be really owing; and ſhall, in reſpect of ſuch fictitious debt, ſign the certificate for ſuch bankrupt's diſcharge; in ſuch caſe, unleſs the bankrupt ſhall, before the major part of the commiſſioners have ſigned the certificate, by writing ſigned by him and delivered to one or more of the commiſſioners or aſſignees, diſcloſe the fraud, and object to the reality of ſuch debt, the certificate ſhall be void, and the bankrupt ſhall not be intitled to his diſcharge or allowance. *ſ.* 9.

Bankrupt's duty after allowance.

46. The bankrupt, after allowance of the certificate, ſhall attend on notice in writing from the aſſignees, to ſettle accounts, and ſhall have 2*s.* 6*d.* a day allowed for attendance; and if he ſhall neglect or refuſe, he ſhall, on oath made by the aſſignees before the commiſſioners, be apprehended and committed to cloſe gaol, by warrant of the ſaid commiſſioners, till he conform. 5 G. 2. *c.* 30. *ſ.* 36.

Commiſſioners pay.

47. To prevent expences, no money ſhall be paid out of the effects for eating or drinking of the commiſſioners, or of any other perſon; nor ſhall the commiſſioners have above 20*s.* each for each meeting; nor any ſchedule be annexed to the deed of aſſignment: Commiſſioners acting contrary hereto, ſhall be diſabled for ever to act as ſuch. 5 G. 2. *c.* 30. *ſ.* 42.

Half fees on renewing the commiſſion.

48. If by the death of commiſſioners, or otherwiſe, it be neceſſary to renew the commiſſion, half fees only ſhall be paid. 5 G. 2. *c.* 30. *ſ.* 45.

Attorney's bill.

49. All bills of fees or diſburſements demanded by any ſolicitor, clerk, or attorney, ſhall be ſettled and certified by a maſter in chancery, who ſhall have for the ſame 20*s.* 5 G. 2. *c.* 30. *ſ.* 46.

Bankrupt dying.

50. Bankrupt dying before diſtribution, ſhall not hinder the diſtribution. 1 *J.* *c.* 15. *ſ.* 17.

Second dividend.

51. In 18 months after iſſuing the commiſſion, the aſſignees ſhall make a ſecond dividend, and ſhall cauſe notice to be inſerted in the gazette of the time and place the commiſſioners intend to meet to make a ſecond diſtribution, and for the creditors who have not proved their debts to come and prove them: And at ſuch meeting, the aſſignees ſhall produce their account on oath, and what is in their hands ſhall by order of the commiſſioners be forthwith divided. Which ſecond dividend ſhall be final, unleſs a ſuit in law or equity be depending, or part of the eſtate ſtanding out that cannot have been diſpoſed of, or that the major part of the creditors ſhall not have agreed to be ſold, or unleſs ſome other or future eſtate of the bankrupt ſhall come to the aſſignees; which they ſhall, as ſoon as may be, convert into money, and in two months diſtribute the ſame in like manner. 5 G. 2. *c.* 30. *ſ.* 37.

But

But no ſuit in equity ſhall be commenced by the aſſignees, without conſent of the major part in value of the creditors, who ſhall be preſent at a meeting of the creditors purſuant to notice in the gazette. *id. ſ.* 38.

52. If the bankrupt ſhall be taken in execution, or detained in priſon, for debt owing before his bankruptcy, by reaſon that judgment was obtained before the certificate was allowed and confirmed; any judge of the court, on producing the certificate, may order him to be diſcharged without fee. 5 *G.* 2. *c.* 30. *ſ.* 13. Bankrupt's diſcharge.

53. But by the diſcharge of a bankrupt from the debts owing by him at the time he became a bankrupt, his partner ſhall not be diſcharged, but ſhall be liable as if the bankruptcy had not been. 10 *An. c.* 15. *ſ.* 3. Partner not diſcharged.

54. The commiſſioners ſhall, on lawful requeſt of the bankrupt, declare how they have beſtowed his lands and goods, and pay to him the overplus, if any there be. 13 *El. c.* 7. *ſ.* 4. Commiſſioners to account, and pay the overplus.

55. On petition to the lord chancellor, he may order the proceedings to be entred of record, to be at any time ſearched and produced as evidence. 5 *G.* 2. *c.* 30. *ſ.* 41. Proceedings to be entred of record.

56. Commiſſioner ſued for any thing done on the ſtatutes of 13 *El.* and 1 *J.* may plead the general iſſue; and if he recovers, ſhall have his coſts. 1 *J. c.* 15. *ſ.* 16. But there is no proviſion for any thing done by them, or by the aſſignees, on any of the ſubſequent ſtatutes. Remedy on commiſſioner being ſued.

57. The commiſſion ſhall not abate by the death of the king. 5 *G.* 2. *c.* 30. *ſ.* 45. King's death not to abate the commiſſion.

Note; The act of 5 *G.* 2. *c.* 30. ſo often mentioned above, is but temporary, and by the laſt continuance is of force till *Sep.* 1. 1757, *&c.*

A. Warrant to apprehend a bankrupt.

Weſtmorland. { To ——.

WHEREAS *a certificate under the hands and ſeals of* —— *hath this day been produced before me* —— *ſetting forth that a commiſſion of bankruptcy is iſſued againſt* —— *and that the ſaid* —— *is proved before them the ſaid* —— *being the major part of the commiſſioners authorized in the ſaid commiſſion, to be a bankrupt; and whereas application hath been made to me by* —— *by order of the ſaid commiſſioners, for the apprehending the ſaid* —— *Theſe are therefore to require you, on ſight hereof, to take and apprehend the ſaid* —— *and bring him before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to be proceeded againſt according to law. Given under my hand and ſeal this* —— *day of* &c.

B. Commitment thereupon.

Weſtmorland. { To the keeper of the common gaol at ——.

I Send to you herewith —— being duly certified to be a bankrupt, requiring you to keep him in the ſaid gaol until he ſhall be diſcharged according to law. Given ——.

Bargain and Sale. See Inrollment.

Barratry.

I. What it is.
II. How puniſhed.

I. What it is.

THIS word *barratry* we have received either from the *Danes*, or *Normans*, or both: for *baratta* in the *Daniſh*, and *baret* in the *Norman*, do equally ſignify a quarrel or contention.

And a *barrator*, in legal acceptation, doth ſignify *a common mover, exciter, or maintainer of ſuits or quarrels, either in courts, or in the country.* 1 Inſt. 368. 1 Haw. 243.

A common mover] It ſeems clear, that no one can be a barrator in reſpect of one act only; for every indictment for ſuch crime muſt charge the defendant with being a *common barrator*. 1 *Haw.* 243, 4.

Mover, exciter, or maintainer] Yet it ſeemeth, that an attorney is in no danger of being judged guilty of an act of barratry, in reſpect of his maintaining another in a groundleſs action, to the commencing whereof he was no way privy. 1 *Haw.* 243.

Alſo, it hath been holden, that a man ſhall not be adjudged a barrator, in reſpect of any number of falſe actions brought by him in his own right: for in ſuch caſes he is liable to coſts. 1 *Haw.* 243.

In courts] Either courts of record; or not of record, as in the county, hundred, or other inferior courts. 1 *Inſt.* 368.

Or in the country] In three manners: 1. In diſturbance of the peace. 2. In taking or keeping of poſſeſſions of lands in controverſy, not only by force, but alſo by ſubtilty and deceit, and moſt commonly in ſuppreſſion of truth and right. 3. By falſe inventions, and ſowing of calumniations, rumors, and reports, whereby diſcord and diſquiet may grow between neighbours. 1 *Inſt.* 368.

II. How

II. How punished.

By the statute of 34 *Ed.* 3. *c.* 1. *The justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take, and chastise them, according to their trespass or offence.*

And altho' this statute doth not create the offence, but supposes it at common law, and only appoints the punishment, yet an indictment of barratry, concluding *against the form of the statute*, is holden to be good, and agreeable to many precedents. *Cro. Eliz.* 148. 1 *Haw.* 244.

But it hath been resolved, that such indictment is not good, without also concluding *against the peace*; for this is an essential part of it, as being an offence by the common law. 1 *Haw.* 244.

And it hath been holden, that an indictment of this kind may be good, without alledging the offence at any certain *place*; because from the nature of the thing, consisting of the repetition of several acts, it must be intended to have happened in several places; for which cause it is said, that a trial ought to be by a jury from the body of the county. 1 *Haw.* 244.

Which case, and that of a common scold, seem to be the only offences for which a general indictment will lie, without shewing any of the particular facts in the indictment; for barratry is an offence of a complicated nature, consisting in the repetition of divers acts in disturbance of the peace, and it would be too prolix to enumerate them in the indictment; and therefore experience hath settled it to be sufficient to charge a man generally as a common barrator, and before the time to give the defendant a note of the particular matters which are intended to be proved against him; for otherwise it will be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances; and therefore the court generally will not suffer the prosecution to go on in the trial of the indictment, without such note being given to the defendant. 1 *Haw.* 244. 2 *Haw.* 226, 7.

As to the kind and manner of punishment, it is said, that if the offender be a common person, he shall be fined and imprisoned, and bound to his good behaviour; and if he be of any profession relating to the law, that he ought also to be farther punished, by being disabled to practice for the future. 1 *Haw.* 244.

Warrant for a barrator.

Westmorland. { To the constable of ———.

WHEREAS *complaint upon oath hath been made unto me* ——— *one of his majesty's justices of the peace in and for the said county, that* A. O. *of* ——— *in the said county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the*

reign of ——— and on divers other days and times as well before as afterwards, at ——— aforeſaid in the county aforeſaid, and at divers other places within the county aforeſaid, was and yet is a common barrator, and daily diſturber of the peace of our ſovereign lord the king, and alſo a common brawler, wrangler, fighter, ſcandalizer, and ſower of ſeditions, ſuits, and diſcords between his neighbours, and other the liege people and ſubjects of our ſaid ſovereign lord the king, to the great damage and diſturbance of the ſaid liege people and ſubjects of our ſaid lord the king, and againſt the peace of our ſaid lord the king, and to the evil example of all others in the like caſe offending: Theſe are therefore to command you forthwith to bring the ſaid A. O. *before me to anſwer unto the ſaid complaint, and to find ſureties for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden for the ſaid county, then and there to anſwer unto an indictment on the behalf of our ſaid ſovereign lord the king to be preferred againſt him for the ſaid offences. Hereof fail not upon the peril that ſhall enſue thereon. Given under my hand and ſeal the ——— day of ———.*

Baſtards.

Concerning the ſettlement of baſtard children. See title Poor.

I. Who ſhall be deemed a baſtard.
II. Securing the reputed father till the filiation ſhall be made.
III. Order of filiation, and appealing therefrom.
IV. Puniſhment of the mother and reputed father.
V. Mother or reputed father running away.
VI. Murdering a baſtard child.
VII. Capacity of a baſtard child as to inheritance.

I. Who ſhall be deemed a baſtard.

Meaning of the word baſtard.

1. THE word *baſtard* ſeemeth to have been brought unto us by the *Saxons*; and to be compounded of *baſe*, vile or ignoble, and *ſtart*, or *ſteort* ſignifying a riſe or original. By the common people in the north (amongſt whom is preſerved much of the ancient *Saxon*) it is ſtill pronounced *baſtart*, denoting a perſon ſprung from a vile or ſpurious origin; even as an *upſtart* is a perſon ſuddenly riſen from a mean extraction in general.

2. Lord

2. Lord *Coke* ſays, We term all by the name of baſtards that are born out of lawful marriage. By the common law, if the huſband be within the four ſeas, that is, within the juriſdiction of the king of *England*, if the wife hath iſſue, no proof is to be admitted to prove the child a baſtard, unleſs the huſband hath an apparent *impoſſibility* of procreation, as if the huſband be but eight years old, or under the age of procreation, ſuch iſſue is baſtard, albeit he be born within marriage. But if the iſſue be born within a month, or a day, after marriage, between parties of full lawful age, the child is legitimate. 1 *Inſt.* 244. Baſtard born in lawful marriage.

M. 6 *G.* 2. *Lomax* and *Holmden*. In ejectment the queſtion on a trial at bar was, whether the leſſor was ſon and heir of *Caleb Lomax*, eſquire, deceaſed; which depended on the queſtion of his mother's marriage. And that being fully proved, and evidence given of the huſband's being frequently at *London*, where the mother lived, ſo that acceſs muſt be preſumed; the defendants were admitted to give evidence of his inability from a bad habit of body. But their evidence not going to an *impoſſibility*, but an *improbability* only; that was not thought ſufficient, and there was a verdict for the plaintiff. *Strange* 940.

And it is ſaid, that formerly if the huſband was within the four ſeas, no proof of *non-acceſs* to his wife was admitted, but the child was deemed to be his; but as this notion was built on no rational foundation, it is now intirely departed from; and though the huſband and wife are both in *England*, if there is ſufficient proof that he had no acceſs to her, the child will be a baſtard. And this was determined, in the caſe of *Pendrell* and *Pendrell*, *M.* 5 *G.* 2. which was an iſſue out of chancery, to try whether the plaintiff was the heir at law of one *Thomas Pendrell*. It was agreed, that the plaintiff's father and mother were married, and cohabited for ſome months; that they parted, ſhe ſtaying in *London*, and he going into *Staffordſhire*; that at the end of three years the plaintiff was born. And there being ſome doubt upon the evidence, whether the huſband had not been in *London* within the laſt year, it was ſent to be tried. And the plaintiff reſted at firſt upon the preſumption of law in favour of legitimacy, which was encountered by ſtrong evidence of no acceſs. And it was agreed by court and counſel, on the trial at *Guildhall* before Lord Ch. J. *Raymond*, that the old doctrine of being within the four ſeas was not to take place, but the jury were at liberty to conſider of the point of acceſs, which they did, and found againſt the plaintiff. And the court of chancery acquieſced in the determination. *Strange* 925. *Andr.* 9.

T. 10 *G.* 2. *K.* and the Inhabitants of *Bedall* in *Yorkſhire*. An order was made upon one *Moor*, as the putative father of two baſtards, born of the body of *Elizabeth* the wife of *Richard Sharpleſs*: in which it is ſtated, that for ſeven years before, the huſband had had no acceſs to her, ſhe having never ſeen or heard of him all that time, and not knowing whether he was alive or dead; which the juſtices adjudge to be true, and that *Moor* is the father of them, and order him to provide accordingly. Upon appeal to the ſeſſions, the caſe is ſtated with ſome variation: that in 1728, ſhe was married

ried to *Sharpleſs*, then a ſoldier in *Mullins*'s troop, in a barn, by a perſon not in the habit of a clergyman; that there had been no acceſs for ſeven years: but it appearing by a certificate from the commiſſary general's office, and from the evidence of *Simon Clarkſon*, that one *Richard Sharpleſs*, who he was told was formerly in *Mullins*'s troop, was muſtered as a private gentleman in the third troop of horſe guards, from *June* 25. 1733. to *Feb.* 23. 1736. though *Clarkſon* ſaid he could not take upon him to ſwear that it was the ſame *Richard Sharpleſs* pretended to be married as aforeſaid; upon this ſuppoſition of the huſband's being alive, the ſeſſions were of opinion, the children were not baſtards, and reverſed the order of the two juſtices. And now upon debate, the order of ſeſſions was quaſhed, and the order of two juſtices confirmed: for it being ſtated in both orders, that there was no acceſs, according to the caſe of *Pendrell* and *Pendrell*, it was immaterial whether the huſband was alive or not. *Strange* 1076.

And, *M.* 10 *W.* *K* and *Abberton*. The caſe was, a feme covert, during the abſence of her huſband at *Cadiz*, was brought to bed of a baſtard; and her huſband was not in *England* from the time of her conception, till ſhe was brought to bed. The queſtion was, whether this child was a baſtard, eſpecially within the words of the ſtatute of the 18 *Eliz.* (hereafter following) which ſaith, *children begotten and born out of lawful matrimony*; which cannot be ſaid of this caſe, the mother being married at the time of the birth of the child; and if ſuch a mother ſhould kill ſuch a child, ſhe could not be guilty of murder within the ſtatute of the 21 *J.* *c.* 27. But by the court; He is a baſtard who is begotten and born of a feme covert, whilſt the huſband is beyond the four ſeas. And in a real action, if general baſtardy was pleaded, the biſhop ought to certify ſuch a one a baſtard. And where a man is baſtard, he is ſuch to all purpoſes, and why not within the 18 *El.* For though the ſtatute of 21 *J.* is a penal law, yet the act of 18 *El.* is a remedial law. L. *Raym.* 395, 396.

How far the wife's oath ſhall be admitted in ſuch caſe.

3. But this non acceſs of the huſband ought to be proved otherwiſe than upon the wife's oath; as in the following caſe: *M.* 8 *G.* 2 *K.* and *Reading*. The defendant *Reading* was adjudged by an order of baſtardy, to be the putative father of a baſtard child, begotten of the wife of one *Almont* of *Sherborn*. The ſaid woman, on the appeal, gave evidence, that the ſaid *Reading* had carnal knowledge of her body in or about *Auguſt* 1732, and ſeveral times ſince; and that her huſband had no acceſs to her from *May* 1731, to the time of her examination in that court, being the 3d of *Oct.* 1733. and that the ſaid *Reading* was the father of the ſaid child. And the queſtion on removal of the ſame into the king's bench was, whether the wife in this caſe could be admitted as an evidence for or againſt her huſband, and to baſtardize her own child. And the whole court were of opinion, that the wife could be a witneſs to no other fact but that of incontinence, and that this ſhe muſt be admitted to be a witneſs to from the neceſſity of the thing; but not to the abſence of her huſband, which might properly be proved by other witneſſes; and likened it to the caſe of hue and cry, where the perſon robbed ſhall

be

be admitted a witneſs of the fact of robbery, but not to prove any other matter relating thereto, as in what hundred the place was, and the like, becauſe that may be proved by others. *Seſſ. C. V.* 2. 175.

But in the caſe of *K.* and *Bedall* abovementioned, The order reciting, that on the examination of the mother, *and on other proof*, it appeared, that her huſband had no acceſs to her, was held to be good; for there the woman's oath is not ſet forth as the only evidence, but *other proof*, which muſt be intended legal proof. *Andr.* 8.

Child born during a divorce.

4. *M.* 5 *An.* St. *George*'s and St. *Margaret*'s *Weſtminſter*. Where a woman is ſeparated from her huſband by a divorce *a menſa & thoro*, the children ſhe has during the ſeparation are baſtards; for a due obedience to the ſentence ſhall be intended, unleſs the contrary be ſhewed: but if a huſband and wife, without ſentence, do part and live ſeparate, the children ſhall be taken to be legitimate, and ſo deemed till the contrary be proved, for acceſs ſhall be intended. But if a ſpecial verdict find the man had no acceſs, it is a baſtard; and ſo was the opinion of Lord *Hale*, in the caſe of *Dickens* and *Collins*. 1 *Salk.* 123.

Widow having a child after her huſband's death.

5. The law hath appointed no exact certain time, for the birth of legitimate iſſue, by the widow after the death of her huſband. 1 *Danv.* 726.

M. 7 *J. Alſop* and *Bowtrell*. The queſtion was, whether, the woman being delivered of a child forty weeks and nine days after the death of her huſband, ſuch child ſhould be deemed a baſtard. And it was proved, that her deceaſed huſband's father did much abuſe her, and cauſed her to lie in the ſtreets; and three phyſicians (two of them being doctors of phyſick) made oath, that the child came in time convenient to be the child of the party who died; and that the uſual time for a woman to go with child, is nine months and ten days, to wit, ſolar months, at thirty days to the month, and not lunar months; and that by reaſon of the want of ſtrength in the woman or the child, or by reaſon of ill uſage, ſhe might be a longer time, *viz.* to the end of ten months or more. And the phyſicians further affirmed, that a perfect birth may be at ſeven months, according to the ſtrength of the mother or child, which is as long before the time of the proper birth. And by the ſame reaſon it may be as long deferred by accident, which is commonly occaſioned by infirmities of the body, or paſſions of the mind. And the child was adjudged to be legitimate. *Cro. Ja.* 541.

II. Securing the reputed father till the filiation ſhall be made.

By the 6 G. 2. *c.* 31. *If any ſingle woman ſhall be delivered of a baſtard child, which ſhall be chargeable, or likely to become chargeable, to any pariſh or extraparochial place; or ſhall declare her ſelf to be with child, and that ſuch child is likely to be born a baſtard, and to be chargeable to any pariſh or extraparochial place, and ſhall in either of ſuch caſes, in an examination* (A) *to be taken*

in

in writing, upon oath, before one juſtice of the county, city, or town corporate, where ſuch pariſh or place ſhall lie, charge any perſon with having gotten her with child, it ſhall be lawful for ſuch juſtice, upon application made to him by the overſeers of the poor of ſuch pariſh, or one of them, or by any ſubſtantial houſholder of ſuch extraparochial place, to iſſue out his warrant (B) *for the immediate apprehending ſuch perſon ſo charged as aforeſaid, and for bringing him before ſuch juſtice, or before any other of his majeſty's juſtices of the peace of ſuch county, city, or town corporate: And the juſtice before whom ſuch perſon ſhall be brought, ſhall commit* (C) *him to the common gaol or houſe of correction, unleſs he ſhall give ſecurity* (D) *to indemnify ſuch pariſh or place, or ſhall enter into a recognizance* (E) *with ſufficient ſurety, upon condition to appear at the next general quarter ſeſſions, or general ſeſſions, of the peace, to be holden for ſuch county or liberty, and to abide and perform ſuch order or orders as ſhall be made, in purſuance of an act paſſed in the 18th year of the reign of her late majeſty queen* Eliſabeth, *concerning baſtards begotten and born out of lawful matrimony.* ſ. 1.

Iſſue out his warrant for the immediate apprehending] If the conſtable, having a warrant to apprehend the reputed father, ſhall willingly or negligently ſuffer him to eſcape; he may be bound over to the ſeſſions, and there indicted, fined, and impriſoned: and under the influence thereof be compelled to make ſatisfaction to the proſecutors.

The next general quarter ſeſſions] Here is no power to bind the man but to the next ſeſſions, which often happeneth before the child is born: What ſhall be done with him at ſuch ſeſſions is not very clear; for he is only bound to abide ſuch order as ſhall then and there be made by the 18 *El.* which ſuppoſeth the child to be then born. Perhaps the ſeſſions, upon application of the overſeers, may bind him again till the next ſeſſions, eſpecially if the mother ſhall come to make oath before them; but if the mother be lying in, and cannot come, it is to be conſidered, whether her examination taken before the firſt juſtice, being proved before them, ſhall be a ſufficient ground for them to proceed upon; or whether the firſt juſtice, upon the application and examination already made before him, may bind him again to the next ſeſſions. At leaſt, it ſeemeth, that the juſtice cannot bind him generally at the firſt, unto the ſeſſions which ſhall happen next after the child ſhall be born; for that ſuch binding is not warranted by the ſtatute.

Eliſabeth] This ſtatute recites the name of queen *Eliſabeth* with an *ſ*; whereas the ſtatutes themſelves of that queen's reign do always exhibit her name with a *z*. Which is noted here only, as not exactly agreeable to that preciſion which ordinarily is required in reciting acts of parliament in caſes penal.

And if ſuch woman ſhall die, or be married, before ſhe ſhall be delivered, or miſcarry of ſuch child, or ſhall appear not to have been with child at the time of her examination, ſuch perſon ſhall be diſcharged from his recognizance at the next ſeſſions, or immediately releaſed

releaſed out of cuſtody by warrant of one juſtice reſiding in or near the limits where ſuch pariſh or place ſhall lie. ſ. 2.

And on application made by any ſuch perſon, who ſhall be committed to any gaol or houſe of correction, or by any perſon on his behalf, to any juſtice reſiding in or near the limits where ſuch pariſh or place ſhall lie; ſuch juſtice ſhall ſummon the overſeers of ſuch pariſh, or one or more ſubſtantial houſholders of ſuch extraparochial place, to appear before him at a time and place to be mentioned in ſuch ſummons, to ſhew cauſe why ſuch perſon ſhould not be diſcharged: And if no order ſhall appear to have been made, in purſuance of the 18*th of* Eliſ. *within ſix weeks after ſuch woman ſhall have been delivered, ſuch juſtice may diſcharge him from his impriſonment.* ſ. 3.

But it ſhall not be lawful for any juſtice, to ſend for any woman, before ſhe ſhall be delivered, and one month after, in order to her being examined concerning her pregnancy; or to compel any woman, before ſhe ſhall be delivered, to anſwer any queſtions relating to her pregnancy. ſ. 4.

To compel any woman] *M.* 11 *G. K.* and *Chandler.* Indictment for ſecreting a woman big with an illegitimate child, ſo that ſhe could not be had to give evidence about the father. The defendant demurred. And by the court, Judgment muſt be given for the defendant, for the child cannot be illegitimate before it is born, there being always a poſſibility that it may be born in lawful wedlock. And by this act the woman is not to be compelled. *Str.* 612. L. *Raym.* 1368.

III. Order of filiation, and appealing therefrom.

In treating hereof, I will firſt ſet forth the ſtatutes, whereon the order is to be framed; then will inſert the approved form of an order of baſtardy, together with the adjudged caſes upon the ſeveral parts thereof; and laſt of all, will conſider certain other reſolutions upon the ſaid ſtatutes, not relating to the form of ſuch order.

The ſtatutes are theſe:

By the 18 *El. c.* 3. it is enacted as follows; *Concerning baſtards begotten and born out of lawful matrimony, the ſaid baſtards being now left to be kept at the charges of the pariſh where they be born, to the great burden of the ſame pariſh, and to the evil example and encouragement of lewd life, it is enacted, that two juſtices* (1 Q.) *in or next unto the limits where the pariſh church is, within which pariſh ſuch baſtard ſhall be born, upon examination of the cauſe and circumſtance* (F), *ſhall and may by their diſcretion, take order* (G) *as well for the puniſhment of the mother and reputed father, as alſo for the better relief of ſuch pariſh, in part or in all; and ſhall and may, by like diſcretion, take order for the keeping of every ſuch baſtard child, by charging ſuch mother or reputed father, with the payment of money weekly, or other ſuſtentation for the relief of ſuch child, in ſuch wiſe as they ſhall think meet and convenient: And if after the ſame order by them ſubſcribed under their hands, the mother or reputed father, upon notice thereof, ſhall not for their part obſerve and perform the ſaid order, that then every ſuch party ſo making de-*

faul:

fault in not performing the ſaid order, to be committed to ward to the common gaol, there to remain without bail or mainpriſe, except he or ſhe ſhall put in ſufficient ſurety (H) *to perform the ſaid order, or elſe perſonally to appear at the next general ſeſſions of the peace, to be holden in that county where ſuch order ſhall be taken; and alſo to abide ſuch order, as the ſaid juſtices, or the more part of them, then and there ſhall take in that behalf (if they then and there ſhall take any); and that if at the ſaid ſeſſions, the ſaid juſtices ſhall take no other order, then to abide and perform the order before made, as is aboveſaid.*

And by 3 Car. c. 4. *All juſtices of the peace within their ſeveral limits and precincts, and in their ſeveral ſeſſions, may do and execute all things concerning the ſtatute of* 18 El. *that by the juſtices in their ſeveral counties are by the ſaid ſtatute limited to be done.* f. 15.

Upon which ſtatutes, the form of an order of baſtardy may be to this effect:

Weſtmorland. THE *order of* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* quorum, *and both reſiding* [*in*, or] *next unto the limits of the pariſh church within the pariſh of* ——— *in the ſaid county, made the* ——— *day of* ——— *in the* ——— *year* ——— *concerning a (male) baſtard child, lately born in the pariſh of* ——— *aforeſaid, of the body of* A. M. *ſingle woman:*

Whereas it hath appeared unto us the ſaid juſtices, as well upon the complaint of the churchwardens and overſeers of the poor of the ſaid pariſh of ——— *as upon the oath of the ſaid* A. M. *that ſhe the ſaid* A. M. *on the* ——— *day of* ——— *now laſt paſt, was delivered of a (male) baſtard child at* ——— *in the ſaid pariſh of* ——— *in the ſaid county, and that the ſaid baſtard child is now chargeable to the ſaid pariſh of* ——— *and likely ſo to continue; and further, that* A. F. *of* ——— *in the ſaid county, yeoman, did beget the ſaid baſtard child on the body of her the ſaid* A. M. *And whereas the ſaid* A. F. *hath appeared before us, in purſuance of our ſummons for that purpoſe, but hath not ſhewed any ſufficient cauſe why he the ſaid* A. F. *ſhall not be the reputed father of the ſaid baſtard child:* [Or, *And whereas it hath been duly proved to us upon oath, that the ſaid* A. F. *hath been duly ſummoned to appear before us the ſaid juſtices, to the end we might examine into the cauſe and circumſtance of the premiſſes; and whereas he the ſaid* A. F. *hath neglected to appear before us, according to ſuch ſummons:*] *We therefore upon examination of the cauſe and circumſtance of the premiſſes, as well upon the oath of the ſaid* A. M. *as otherwiſe, do hereby adjudge him the ſaid* A. F. *to be the reputed father of the ſaid baſtard child.*

And thereupon we do order, as well for the better relief of the ſaid pariſh of ——— *as for the ſuſtentation and relief of the ſaid baſtard child, that the ſaid* A. F. *ſhall and do forthwith, upon notice*

tite of this our order, pay or cauſe to be paid to the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of ——— *or to ſome or one of them, the ſum of* ——— *for and towards the lying-in of the ſaid* A. M. *and the maintenance of the ſaid baſtard child, to the time of making this our order.*

And we do alſo hereby further order, that the ſaid A. F. *ſhall likewiſe pay or cauſe to be paid, to the churchwardens and overſeers of the poor of the ſaid pariſh of* ——— *for the time being, or to ſome or one of them, the ſum of* ——— *weekly and every week from this preſent time, for and towards the keeping, ſuſtentation, and maintenance of the ſaid baſtard child, for and during ſo long time, as the ſaid baſtard child ſhall be chargeable to the ſaid pariſh of* ———.

And we do further order, that the ſaid A. M. *ſhall alſo pay or cauſe to be paid to the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* ——— *for the time being, or to ſome or one of them, the ſum of* ——— *weekly and every week, ſo long as the ſaid baſtard child ſhall be chargeable to the ſaid pariſh of* ——— *in caſe ſhe ſhall not nurſe and take care of the ſaid child her ſelf.*

Given under our hands and ſeals the day and year firſt above written.

One whereof is of the quorum] Many orders formerly have been quaſhed, for want of ſetting forth that one of the juſtices was of the *quorum*; but now by the ſtatute of 26 G. 2. *c.* 27. no order ſhall be quaſhed for that defect only.

Whereas it hath appeared unto us] *K.* and *Beard.* The examination of the woman muſt be by two juſtices, as well as the ordering part; for the examination is a judicial act, and ought to be by both; and it is not enough that one ſhould examine, and make report to the other; but if they are both preſent, and one only examine, it is well enough, for it is in fact the examination of both. 2 *Salk.* 478.

As well upon the complaint of the churchwardens and overſeers] An order made without the complaint of the pariſh officers, is not good. *Black.* 44.

As upon the oath of the ſaid A. M.] It ſeemeth, that the mother may be examined upon oath, concerning the reputed father, and of the time and other circumſtances; for that in this caſe, the matter, and the trial thereof, dependeth chiefly upon the examination and teſtimony of the mother. *Dalt. c.* 11.

Was delivered of a (male) baſtard child] *H.* 8 *G. K.* and *England.* An order was quaſhed, becauſe the ſex of the baſtard, or the name of it were not mentioned; only, a certain baſtard child born of the body of ſuch a woman. *Strange* 503.

At ——— *in the ſaid pariſh of* ———] *M.* 11 *An. Q.* and *Caſh.* The order did not ſet forth that the child was born in the pariſh; and by the ſtatute the juſtices cannot make an order to compel a man to contribute towards the maintenance of a baſtard child,

child, but in caſe of that pariſh where the child was born: And quaſhed for this reaſon. *Caſe of S.* 59.

T. 7 *G. K.* and *Butcher.* Exception was taken to an order of baſtardy, that it did not appear the child was born in the pariſh to which the relief is ordered; for it ran, *We two juſtices of the borough of* Lime Regis, *reſiding within the limits where the pariſh church is, within which pariſh the child was born* ——— Which is only an averment, that the juſtices reſided in that pariſh where the child was born, but that might not be the ſame pariſh ordered to be relieved. And for this fault the order was quaſhed. *Strange* 437.

E. 10 *G.* 2. *K.* and *Greaves.* The pariſh where the child is born, is only to be indemnified; and if the baſtard has acquired a ſettlement elſewhere, the father is then diſcharged. *Nelſ. Baſt.*

And upon this head it is obſervable, that there is one caſe, which although it frequently happeneth, yet is not within the ſtatute; and that is, where a baſtard is born in a pariſh where the mother hath no ſettlement. The child ſhall go with its mother for nurture, whilſt it is a nurſe child, to her place of ſettlement; and ſuch place can have no remedy upon this ſtatute, for that the child was not born there. And it ſeemeth that the pariſh, where it was born, ſhall not be liable to maintain it, until the child ſhall be lawfully removed thither, as to its place of ſettlement.

Upon which ground alſo, it ſeemeth not ſafe, to grant a certificate with a woman with child of a baſtard, thereby indemnifying the pariſh where it ſhall be born, and promiſing to receive and provide for the baſtard child when it ſhall become chargeable. For the pariſh granting ſuch certificate, can have no remedy againſt the mother or reputed father, but only the pariſh where the child was born; nor can that pariſh neither, becauſe it is indemnified.

Chargeable to the ſaid pariſh] Order to provide for a baſtard child: Exception was taken, that the order doth not ſet forth that he is chargeable to the pariſh, or likely to be ſo. And quaſhed by the court. *Comb.* 32.

But in *K.* and *Matthews, H.* 8 *W* Exception was taken, that the order doth not ſet forth that the child is likely to become chargeable: But this exception was over-ruled; for that it is ſelf evident, that every baſtard child is likely to become chargeable. 2 *Salk.* 475, 6.

And further, that A. F. *of* ——— *in the ſaid county, yeoman, did beget the ſaid baſtard child*] *T.* 2 *G.* 2. *K.* and *Browne.* Upon an order of baſtardy it was ſtated, that the huſband had been abſent ſix years, and that during his abſence the defendant had *had carnal knowledge* of the wife, and therefore they adjudge him to be the putative father. But by the court, This order muſt be quaſhed; for his lying with her is not a ſufficient reaſon to infer him the father of this child: and though the juſtices need not ſhew the grounds they go upon, yet if they do, and it appears no ſufficient ground, their order will be bad. *Strange* 811.

Sum-

Summons] If the order do not ſet forth, that the defendant was duly ſummoned to appear, and for what cauſe, it ought to be quaſhed. *K.* and *Glegg*, *Caſes in L. and E.* 4.

T. 6 & 7 *G.* 2. *K.* and *Cotton.* Motion for an information againſt the defendant, who with another juſtice made an order of baſtardy upon one *Fitzgerald*, without ſummoning him to appear before them to make his defence: Upon appeal to the ſeſſions he was acquitted, and put to great expences; which it was inſiſted was contrary to natural juſtice. By Mr. Juſtice *Page*; No man in an office can be ſuppoſed to be ſo ignorant, as not to know it is againſt natural juſtice, to convict a man without a ſummons; the examination ought to be ſo made, that the truth may appear, and that muſt be by examining both ſides, otherwiſe it is partial; the ſcandal, the expence, and the diſorder in Mr. *Fitzgerald*'s family, are things that ought to be conſidered; here was no taking by warrant, and therefore an action of falſe impriſonment would not lie; and this is the only method can be uſed, to puniſh the juſtice. Mr. J. *Probyn*; The principal objection about a ſummons is right in law, and in reaſon; poſſibly an action on the caſe might be framed; there may poſſibly have been only an error in judgment, and it is hard to grant an information. Mr. J. *Lee*; If this was ſtrictly a conviction, againſt which no appeal lies, an information ought to be granted; but he thought the matter was not ſo very ſtrong in the caſe of orders. And the rule was diſcharged. *Seſſ. C. V.* 1. 179.

E. 8 *G.* 2. *K.* v. *Taylor* and *Neale.* Motion in the king's bench for an information againſt the defendants, two juſtices of *Devonſhire*, for making an order on one *Nicholas Mould*, adjudging him to be the putative father of a baſtard child, without ſummoning him, and alſo for refuſing to hear his witneſſes. On ſhewing cauſe, it appeared that he was ſummoned by a third juſtice, which the court held to be ſufficient; but that the defendant not appearing himſelf, the juſtices would not hear his witneſſes. And by the court, ſuppoſing the man was ſummoned, and did not appear, the juſtices are not then bound to hear any evidence for him; and this court will not hear any evidence in behalf of a perſon, who ſhould attend here, and does not. *Seſſ. C. V.* 2. 192.

Do hereby adjudge] *T.* 4 *An.* *Q.* and *Weſton.* The great objection which ſtuck long with the court, was, that it was ſaid in the order, we the ſaid juſtices *doth* adjudge, inſtead of *do* adjudge; and after the caſe had depended two terms, and been ſeveral times ſtirred, the court for that exception, the laſt day of the term, quaſhed the order. L. *Raym.* 1198.

And afterwards, *H.* 4 *An.* The ſame juſtices made another order, with the very ſame fault in it, *viz.* *doth* adjudge; and upon a *certiorari*, that was quaſhed. L. *Raym.* 1198.

Adjudge the ſaid A. F. *to be the reputed father*] *E.* 20 *C.* 2. *K.* and *Perkaſſe.* An order was quaſhed, becauſe there was no adjudication, that the perſon againſt whom the complaint was made, was the reputed father. 2 *Sid.* 363.

H. 9 *G.* 2. *K.* and *Jenkins.* Motion to quaſh an order of two juſtices, whereby they adjudge, that ſuch a perſon is *not* the putative father of a baſtard child, and therefore they diſcharge him; and the rather, becauſe in ſuch a caſe the pariſh cannot appeal, becauſe an appeal is only, when the party refuſes to give ſecurity to come to ſeſſions. And by the whole court, the two juſtices have no ſuch authority; for their whole power depends on the ſtatute of 18 *El.* and that is only to take order for puniſhment of the parties, and for relief of the pariſh; and this order is for neither the one nor the other. *Seſſ. C. V.* 2. 161. *Strange* 1050.

The ſum of ——— for and towards the lying-in] *M.* 12 *An. R.* and *Odam.* Order for maintenance of a baſtard child, was excepted to, becauſe the defendant is upon ſight of the order to pay 9*l.* in groſs; and after that, ſo much weekly. And by the court; By the ſtatute the juſtices are to take order for relief of the pariſh, and keeping of the child, by payment of money weekly, or other ſuſtentation; and this may be only indemnifying the pariſh for money laid out before the reputed father was found. 1 *Salk.* 124.

The ſum of ——— weekly] *E.* 20 *C.* 2. *K.* and *Perkaſſe.* It was moved in the court of king's bench, to quaſh an order for maintaining a baſtard child made at the quarter ſeſſions, and the exception was, becauſe it was unreaſonable, in reſpect of the ſmallneſs of the ſum; namely, but 2*d.* a week for the maintenance of the child: And the court were of opinion that it ſhould be quaſhed, unleſs cauſe ſhewn; and they ſaid, that altho' none but the juſtices could declare the father, yet if they were unreaſonable in the ſum, the court might judge of that. 2 *Sid.* 363.

During ſo long time as the ſaid baſtard child ſhall be chargeable] *E.* 9 *W.* *K.* and *Barebaker*, Order to pay ſo much money by the week, till the child ſhall be fourteen years of age, is naught; for the juſtices have no power but to indemnify the pariſh; and that is only to oblige him to maintain the child, as long as it is or may be chargeable. 1 *Salk.* 121. 2 *Salk.* 478.

An order that the putative father ſhould pay ſo much a week, until it ſhould be able to get its living by working, was quaſhed; it ſhould have been for ſo long time, as the child ſhall be chargeable to the pariſh. 1 *Vent.* 210.

M. 1 *G.* 2. *K.* and *Street.* An order of baſtardy was made, to pay ſo much weekly, till the child was nine years old, if it ſhould ſo long live. And by the court, It is a good order, for we cannot intend it able to provide for it ſelf ſooner. *Strange* 788. But then it may be bound an apprentice into another pariſh before that age, and having gained a ſettlement in ſuch other pariſh, the effect of the order ſhould then ceaſe. Therefore it is beſt in this and all ſuch like caſes to hold to the ſtatute: and the ſtatute here only gives power to the juſtices *to take order for the relief of the pariſh where the child ſhall be born.*

T. 9 *W.* *Browne's* caſe. The juſtices cannot order a ſum, for putting out the child an apprentice. *Comb.* 448.

But in the caſe of *K.* and *Blackwell*, *M.* 4 *G.* The order was, that the reputed father ſhall pay to the churchwardens ſo much

weekly from the time of the birth of the child, until he ſhall attain the age of 12 years, if he ſhall ſo long continue chargeable; and when he ſhall attain the age of 12 years, to pay 4 *l.* to put him out apprentice, and this was held good. The ſame reſolved, *Caſes in L. and E.* 85. And *H.* 2 *G. K.* and *Stone. Nelſ. Baſt.*

But it ſeemeth not neceſſary to incumber the order therewith; for it may be the ſame thing if the pariſh bind him out, and pay the money; for until ſuch ſum ſhall be run off by the weekly payments, ſo long the child continues chargeable.

But after all, ſo far as theſe errors above rehearſed ſhall affect only the form of the order, and not the merits thereof; the ſame may be amended at the ſeſſions, by the 5 *G.* 2. *c.* 19. before the appeal ſhall be proceeded upon, and then the court ſhall go upon the merits.

HAVING thus diſtinctly conſidered the form of an order of baſtardy as eſtabliſhed upon the ſtatutes aforegoing, I proceed to ſome other reſolutions upon the ſaid ſtatutes, concerning divers matters not relating to the form of ſuch order: Which are theſe. 1. In what time the order ſhall be made. 2. Whether the juſtices can order ſecurity to be given to perform their order. 3. To what ſeſſions the appeal againſt the order ſhall be. 4. Whether the ſeſſions can proceed originally in the caſe of baſtardy. 5. Whether on appeal it is neceſſary that the reputed father ſhall be preſent in court. 6. In what caſe the order of the ſeſſions ſhall be final. 7. In what manner the ſeſſions ſhall inforce their own order. 8. What ſhall be done if the two next juſtices cannot agree. 9. What ſecurity ſhall be requiſite to indemnify the pariſh, to prevent any order from being made.

(1) *In what time the order ſhall be made.* There is no time limited by the ſtatute, in which the order ſhall be made; ſo that it may be made at any time after the birth of the child.

And in the caſe of *K.* and *Miles*, *M.* 1 *G.* On motion to quaſh an order of baſtardy, it was reſolved, that if the father run away, and return, tho' 14 years after, yet an order to fix the child on him is good; for there is no ſtatute of limitation in theſe caſes. *Seſſ. C. V.* 1. 77.

But by the aforeſaid ſtatute of 6 *G.* 2. if the reputed father is in priſon, and no order ſhall be made in ſix weeks after the birth of the child, he may in ſuch caſe be diſcharged from his impriſonment; but the order nevertheleſs made upon him afterwards, will be good.

(2) *Whether the juſtices can order ſecurity to be given to perform their order. E.* 2 *An.* Q. and *Chaffey.* Exception was taken, that the order was, that the defendant ſhould give ſecurity for payment of the ſum by them impoſed for the maintenance of the child; when it did not appear, that the defendant had diſobeyed the order in point of payment. And for this reaſon, the order was quaſhed as to that part. L. *Raym.* 858. 3 *Salk.* 66.

And with this all the other reſolutions do agree. *T.* 11 *An.* Q. and *Clogg.* 4 *G. K.* and *Buckle. T.* 8 & 9 *G.* 2. *K.* and *Meſſenger. Nelſ. Baſt.*

And ſo are the words of the ſtatute; *viz. if the party ſhall not perform the ſaid order*, he ſhall then (ſo making default) be committed, unleſs he ſhall put in ſurety to perform the ſame, or to appear at the ſeſſions.

And therefore that part of the form of an order, which directeth ſuch ſecurity to be given, and which runs thro' almoſt all the books, ſeems to be not good.

And here then will be a gap left open, by a defect in the law, for the reputed father to run away, and (if he leave no effects) to avoid the future payments, by obeying the order for the preſent, in paying off ſo far as ſhall be then due; for here ſeemeth to be no power to compel ſecurity to be given for the future, unleſs only in the caſe of diſobedience.

(3) *To what ſeſſions the appeal againſt the order ſhall be.* The ſtatute directs, that the appeal ſhall be *to the next general ſeſſions of the peace to be holden in that county, where ſuch order ſhall be taken.*

Next general ſeſſions] That is to ſay, The next general ſeſſions after notice of ſuch order. 3 *Keb.* 551.

General ſeſſions] *T.* 10 *W. K.* and *Shaw.* An order was made by two juſtices, adjudging *Shaw* to be the reputed father of a baſtard; whereupon he appealed to the next *quarter* ſeſſions after notice; where the order of the two juſtices was diſcharged: And now it was moved to quaſh the order of ſeſſions, becauſe by the ſtatute the appeal muſt be to the next *general* ſeſſions, and there might have been a general ſeſſions before the general quarter ſeſſions, as in *London* and *Middleſex*, where there are four general ſeſſions in the year, beſides the quarter ſeſſions. And quaſhed for this fault. 2 *Salk.* 482.

To be holden in that county] It was moved to quaſh an order, for that it was at the ſeſſions of the peace *in* the county aforeſaid, and did not ſay *for* the county; but this was overruled, for that there is not ſo much ſtrictneſs required in orders, as there is in indictments. 1 *Ventr.* 37.

To which may be added alſo, that this is according to the words of the ſtatute.

In that county where ſuch order ſhall be taken] *T.* 15 *C.* 2. *K.* and *Coyſtan.* Reſolved, that this ſhall be intended of the next ſeſſions of that part of the county, where it was made, and not at the next ſeſſions in the county at large; for that would be miſchievous in many counties, where there are ſeveral ſeſſions in diſtinct parts of the county. 1 *Sid.* 149.

(4) *Whether the ſeſſions can proceed originally in the caſe of baſtardy.* It hath been much diſputed, whether the ſeſſions may make an original order, in the caſe of baſtardy, by the ſtatute of the 3 *Car. c.* 4. in like manner as the two juſtices may do by the 18 *El.* If a conjecture may be allowed, after ſo long a ſpace of time from the making of the ſaid acts, and after the opinions of ſo many learned men thereupon, it ſhould be this: In the firſt place, as to thoſe who hold the negative, namely, that the ſeſſions

ſions cannot proceed originally upon the ſaid ſtatute of 3 *Car.* it is clearly obſervable, albeit their opinion may be true, that it reſteth upon a falſe foundation, namely, upon a ſuppoſition that the ſaid ſtatute of 3 *Car.* is expired; which is none other than a palpable overſight committed by one author, and followed by others without examination (a thing not unuſual in this kind of learning). Suppoſing therefore that the ſtatute of the 3 *Car.* is of force, let us put the caſe, that the ſeſſions may proceed originally thereupon, in like manner as the two juſtices may do by the 18 *El.* then there will appear this difficulty upon the face of it, that after the ſeſſions ſhall have made ſuch order, if the party ſhall make default in the performance thereof, then (according to the directions of the ſaid ſtatute of 18 *El.*) the party ſo making default ſhall put in ſurety to perform the ſaid order, or elſe perſonally to appear at the next ſeſſions, to abide ſuch order as ſhall there be made in the premiſſes, or ſhall be committed for his refuſal. Which implies an appeal from one ſeſſions to another; a thing which is unknown to our laws, an appeal always ſuppoſing a removing the cauſe from an inferior to an higher juriſdiction, and not from the ſame court to the ſame court. Now the obvious reſolution of the matter perhaps may be this; the ſtatute of the 18 *El.* which was a temporary act, doth require, that if the party ſhall make default in performance of the order of the two juſtices, they ſhall commit him to gaol, unleſs he ſhall put in ſurety to perform the ſaid order, or elſe perſonally to appear at the next ſeſſions, and to *abide ſuch order as the juſtices there ſhall take in that behalf (if they then and there ſhall take any) and that if at the ſaid ſeſſions they ſhall take no other order, then to perform the ſaid order before made*; without any ſpecial power given to the ſeſſions, either by that act, or by any other, to take any order therein at all. Then comes the ſtatute of 3 *Car. c.* 4. which enacteth, that the ſaid ſtatute of 18 *El.* ſhall be continued, together with this ſupplementary clauſe, that *the juſtices in ſeſſions may do and execute all things concerning the ſaid ſtatute of* 18 El. *that by the juſtices in the ſeveral counties are by the ſaid ſtatute limited to be done.* And then the whole taken together will amount to no more than this; that the two juſtices out of ſeſſions ſhall take order for the puniſhment of the mother and reputed father, and for the relief of the pariſh, and that if upon appeal the matter ſhall come before the ſeſſions, the ſeſſions ſhall have power to determine thereupon, and to take ſuch order therein, as the two juſtices may do out of ſeſſions.

So that upon this ſuppoſition, the ſtatute of the 3 *Car.* doth not give the ſeſſions a power to proceed originally, and ſo deprive the party of the benefit of an appeal, but only explains the power intended by the 18 *El.* of the ſeſſions upon an appeal to hear and determine the ſame.

And nothing is more frequent, in the like caſes, than for an act continuing a former act, to add an explanatory clauſe of ſome doubtful part of ſuch former act; of which we have an inſtance at hand in this very ſame ſtatute of 3 *Car. c.* 4. which, continuing the ſtatute of the 43 *El.* concerning the power given to the overſeers to bind out poor children apprentices, adds this ex-

planatory clauſe, *viz.* that all perſons to whom the overſeers ſhall bind ſuch poor children apprentices, may take and receive them as apprentices.

(5) *Whether on appeal it is neceſſary that the reputed father ſhall be preſent in court. H.* 8 *W. K.* and *Matthews.* The court will not quaſh an order of baſtardy, unleſs the reputed father be preſent in court. 2 *Salk.* 475.

And the reaſon is, that if the cauſe ſhall go againſt him, he may be proceeded againſt, in caſe of contempt or diſobedience.

(6) *In what caſe the order of the ſeſſions ſhall be final. M.* 13 *G. K.* and *Tenant.* The order of two juſtices being quaſhed upon the merits by the ſeſſions on an appeal, the defendant is thereby legally acquitted, and cannot be drawn in queſtion again for the ſame fact. L. *Raym.* 1423, 4. *Strange* 716.

If the two next juſtices make an order, and the party appeals to the next ſeſſions, and they alter, or diſcharge, or confirm that order, any other ſeſſions cannot order any thing contrary thereto, for the order upon the appeal is final. *Cro. Car.* 341, 350. *Pridgeon*'s caſe.

T. 1 *G.* 2. *K.* and *Arundell.* Two juſtices make an order, that the defendant ſhall pay a ſum in groſs, and alſo 2*s.* a week ſo long as the child ſhall be chargeable. The party appeals to the ſeſſions, who confirm the order. At a ſubſequent ſeſſions, the father of the baſtard deſired to have the keeping of it, and that the payment of the 2*s.* a week ſhould ceaſe; which the ſecond ſeſſions ordered. Motion was made to quaſh this laſt order of ſeſſions, becauſe in this caſe they had no juriſdiction. And the court held, that the ſecond ſeſſions had no authority to order the ſubtraction of the 2*s.* a week; and the order was quaſhed, becauſe it was made out of time (being three years after the appeal), and therefore the juſtices had no juriſdiction. *Seſſ. C. V.* 1. 234.

(7) *In what manner the ſeſſions ſhall inforce their own order. T.* 4 *An. Q.* and *Weſton.* The caſe was, *Weſton* had appealed to the ſeſſions, where the order was confirmed, and he committed for not paying the money ordered: And exception was taken, that the ſeſſions ſhould have proceeded againſt him upon his recognizance. And by *Holt* Ch. J. If they proceed on the 18 *El.* the ſeſſions hath no power to commit, but to proceed on his recognizance; but if on the 3 *C.* the ſeſſions may commit as the two juſtices might have done, that is, unleſs the party put in ſecurity to perform the order, or to appear at the next ſeſſions. 1 *Salk.* 122. L. *Raym.* 1157.

Note; This caſe goes upon the ſuppoſition that the ſeſſions may proceed originally on the ſtatute of 3 *C. c.* 4. and thereupon inferreth the abſurdity abovementioned, of appealing from one ſeſſions to another. But the method of proceeding againſt the reputed father, in caſe of diſobedience to the order of ſeſſions, ſeemeth to be not difficult; if he is bound over to abide the order of the ſeſſions, his recognizance may be eſtreated; if he hath not been bound over, he may be indicted, fined, and impriſoned for the contempt.

(8) *What*

(8) *What ſhall be done if the two next juſtices cannot agree.* In this matter the ſtatute of 18 *El.* is different from moſt other ſtatutes; for generally where power is given to two juſtices, the ſtatutes expreſs that two or more juſtices may do ſuch a thing; but here the ſtatute ſaith only, that two juſtices, dwelling in or next unto the pariſh, ſhall have power to take order therein. And Mr. *Dalton* makes a *quære*, what ſhall be done, if the two next juſtices cannot agree in the order, or ſhall make no order: And this caſe, tho' likely enough to happen ſometimes, hath not yet been determined. If they will not proceed at all, there ſeemeth to be no doubt, but that they may be compelled by a *mandamus*; and if they cannot agree, yet ſtill it ſeemeth, that they may in like manner be compelled, for till that is done, they have taken no order for the relief of the pariſh, which the ſtatute requires that they ſhall do. But whether, if one of the next juſtices ſhall refuſe, and another not the next ſhall or may act in ſuch caſe, doth not appear to have been adjudged.

(9) *What ſecurity ſhall be requiſite to indemnify the pariſh, to prevent any order from being made.* *E.* 11 *An.* *Q.* and *Smith.* If the father will take the child (and the mother is willing to part with it, being a nurſe child) he muſt do it at firſt; and by ſuffering the order to be made, it ſhall be deemed a refuſal in law: beſides, he ſhall not then be ſuffered; he may ſell it, or make away with it, as too often happens. *Caſ. of S.* 64.

Whether a bond or other ſecurity ought to be made to the churchwardens and overſeers and their ſucceſſors, or to their executors or adminiſtrators, hath been queſtioned; concerning which, the author of the readings upon the ſtatutes ſaith thus: Thoſe gentlemen who have taken upon them, to direct the officers, to have ſuch bonds or other ſecurities made to them and their ſucceſſors, would do well to conſider, whether the churchwardens and overſeers are ſuch a corporation as can purchaſe, ſue and be ſued. And whether bonds, being things in action, it may not be difficult for the ſucceſſors of the churchwardens and overſeers, to whom they were made, to maintain an action, on a bond made to their predeceſſors. 'Tis true, churchwardens may maintain an action for the goods of their church. But they are not ſuch a corporation, as can take or purchaſe lands, or take ſecurities for the uſe of their church, except in *London*. And it never was pretended, that the churchwardens and overſeers of the poor are a corporation in any reſpect, in relation to the poor, and conſequently, can neither ſue nor be ſued as ſuch. *Read. Baſt.*

And indeed, upon the whole, the taking of a bond in any kind ſeemeth not ſo convenient for the pariſh, as an order made by the juſtices; becauſe the ſuing upon a bond is both tedious and expenſive, whereas the courſe of carrying of an order into execution is very ſhort and eaſy. But then, on the other hand, a bond will bind a man's executors; but the order of the juſtices being obligatory only upon the man himſelf, when he dies, the order dieth with him.

IV. Puniſhment of the mother and reputed father.

By the 18 *El. c.* 3. *Concerning baſtards being left to be kept at the charges of the pariſh where born, to the great burden thereof, and to the evil example and encouragement of lewd life, it is enacted, that the two next juſtices ſhall take order therein, as well for the puniſhment of the mother and reputed father, as for the relief of the pariſh.*

And by 7 *J. c.* 4. *Every lewd woman which ſhall have any baſtard which may be chargeable to the pariſh, the juſtices of the peace ſhall commit ſuch lewd woman to the houſe of correction, there to be puniſhed and ſet on work, during the term of one whole year; and if ſhe ſhall eftſoons offend again, then to be committed to the ſaid houſe of correction as aforeſaid, and there to remain, until ſhe can put in good ſuretics for her good behaviour, not to offend ſo again.* ſ. 7.

For the puniſhment of the mother and reputed father] That is, by corporal puniſhment: But a woman ſhall not be puniſhed both by corporal puniſhment, and by being ſent to the houſe of correction, for that no one ought to be puniſhed twice for one and the ſame offence. *Dalt. c.* 11.

Baſtard which may be chargeable] It ſeemeth by theſe words, that ſuch a woman ſhall not be ſent to the houſe of correction, until after the child be born, and that it be living; for it muſt be ſuch a child as may be chargeable to the pariſh. *Dalt. c.* 11.

And if ſhe will diſcharge the pariſh of keeping the baſtard, ſhe cannot be puniſhed by this ſtatute of 7 *J.*

But nevertheleſs ſhe may be puniſhed (Lord *Coke* ſays) by the ſtatute of 18 *El.* 2 *Inſt.* 733.

Which opinion ſeems juſtly queſtionable: for the preamble of the ſaid act of 18 *El.* (as hath been rehearſed) ſeemeth to reſtrain the juriſdiction of the juſtices to the parents of ſuch baſtard children only as may be chargeable.

But the proper puniſhment in ſuch caſe, ſeems to be by preſentment in the ſpiritual court.

The juſtices of the peace ſhall commit] It ſeemeth that ſuch commitment ought to be by two juſtices at the leaſt; and by comparing the two ſtatutes together, it ſeemeth fitteſt for the two next juſtices authorized by the 18 *El.* *Dalt. c.* 11.

Shall commit ſuch lewd woman] But ſuch puniſhment ſhall not be, until after that the woman is delivered of her child; neither are the juſtices to meddle with the woman, until the child be born, and ſhe ſtrong again. *Dalt. c.* 11.

Alſo it ſeemeth, that ſuch baſtard child is not to be ſent with the mother to the houſe of correction, but rather that the child ſhould remain in the town where it was born (or ſettled with the mother) and there to be relieved by the work of the mother, or by relief from the reputed father; and yet the common opinion and practice is otherwiſe, *viz.* to ſend the child with the mother

to the houſe of correction; and this may alſo ſeem reaſonable, where the child ſucketh on the mother. *Dalt. c.* 11.

But it ſeemeth much the beſt, to commit the mother only, and not the child, but leave it to her choice whether ſhe will take it with her; and if ſhe will not, then to ſend it to its lawful place of ſettlement.

Then to be committed to the ſaid houſe of correction as aforeſaid.] Which words do imply that ſhe ſhall not be puniſhed as for a ſecond offence, unleſs ſhe hath been committed and puniſhed in the houſe of correction for the firſt.

V. Mother or reputed father running away.

Whereas the putative fathers and lewd mothers of baſtard children run away out of the pariſh and ſometimes out of the county, and leave the baſtard children upon the charge of the pariſh where they are born, altho' they have eſtates ſufficient to diſcharge the pariſh; it ſhall be lawful for the churchwardens and overſeers of ſuch pariſh where any baſtard child ſhall be born, to take and ſeize ſo much of the goods, and receive ſo much of the annual rents of the lands of ſuch putative father or lewd mother, as ſhall be ordered by any two juſtices, towards the diſcharge of the pariſh, to be confirmed at the ſeſſions, for the bringing up and providing for ſuch baſtard child; and thereupon the ſeſſions may make an order for the churchwardens or overſeers of ſuch pariſh, to diſpoſe of the goods by ſale or otherwiſe, or ſo much of them for the purpoſes aforeſaid, as the court ſhall think fit, and to receive the rents and profits of the lands, or ſo much of them as ſhall be ſo ordered by the ſeſſions. 13 & 14 C. 2. c. 12. ſ. 19.

E. 2 *An. Q.* and *Chaffey.* Order to the churchwardens and overſeers, to ſeize of the putative father's goods, what they ſhould judge proper for ſecuring of the pariſh, quaſhed; for that it ſhould be, what the juſtices think proper, and not what the churchwardens and overſeers think proper. L. *Raym.* 858.

VI. Murdering a baſtard child.

Concealing the death of a baſtard child.

1. By the 21 *J. c.* 27. *If any woman be delivered of any iſſue of her body, male or female, which being born alive, ſhould by the laws of this realm be a baſtard, and ſhe endeavour privately, either by drowning, or ſecret burying thereof, or any other ways, either by her ſelf, or the procuring of others, ſo to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed, ſhe ſhall ſuffer death as in caſe of murder, except ſhe can prove by one witneſs at the leaſt, that the child was born dead.*

And it hath been adjudged, that in order to convict a woman by force of this ſtatute, there is no need that the indictment be drawn ſpecially, or conclude againſt the form of the ſtatute; for the ſtatute doth not make a new offence, but only make ſuch concealment an undeniable evidence of murder. 2 *Haw.* 438.

Alſo,

Alſo, it hath been agreed, that where a woman appears to have endeavoured to conceal the death of ſuch child within the ſtatute, there is no need of any proof that the child was born alive, or that there were any ſigns of hurt upon the body, but it ſhall be undeniably taken that the child was born alive, and murdered by the mother. 2 *Haw.* 438.

But it hath been adjudged, that where a woman lay in a chamber by her ſelf, and went to bed without pain, and waked in the night, and knocked for help but could get none, and was delivered of a child, and put it in a trunk, and did not diſcover it till the following night, yet ſhe was not within the ſtatute, becauſe ſhe knocked for help. 2 *Haw.* 438.

Alſo, it hath been agreed, that if a woman confeſs her ſelf with child beforehand, and afterwards be ſurprized and delivered, no body being with her, ſhe is not within the ſtatute, becauſe there was no intent of concealment, and therefore in ſuch caſes it muſt appear by ſigns of hurt upon the body, or ſome other way, that the child was born alive. 2 *Haw.* 438.

Giving a potion to cauſe abortion.

2. If a woman be with child, and any gives her a potion to deſtroy the child within her, and ſhe take it, and it works ſo ſtrongly that it kills her, this is murder; for it was not given to cure her of a diſeaſe, but unlawfully to deſtroy her child within her; and therefore he that gives her a potion to this end, muſt take the hazard, and if it kills the mother, it is murder. 1 *H. H.* 429, 30.

If a woman be quick or great with child, if ſhe take, or another give her any potion to make an abortion, or if a man ſtrike her, whereby the child within her is killed, tho' it be a great crime, yet it is not murder nor manſlaughter by the law of *England*, becauſe it is not yet *in rerum natura*, nor can it legally be known, whether it were killed or not: So it is, if after ſuch child were born alive, and after die of the ſtroke given to the mother, this is not homicide. 1 *H. H.* 433.

But if a man procure a woman with child to deſtroy her infant when born, and the child is born, and the woman in purſuance of that procurement kill the infant; this is murder in the mother, and the procurer is acceſſary. 1 *H. H.* 433.

VII. Capacity of a baſtard child as to inheritance.

A baſtard can have no name of reputation as ſoon as he is born; but after he is born, and hath gained by time a name by reputation, he may purchaſe by his reputed name, to him and to his heirs; tho' he can have no heirs but of his body. 1 *Inſt.* 3. 6 *Co.* 65.

A baſtard is *terminus a quo*; he is the firſt of his family, for he hath no relation of which the law takes any notice; but this muſt be underſtood as to civil purpoſes, for there is a relation as to moral purpoſes, therefore he cannot marry his own mother, or ſiſter, or the like. 3 *Salk.* 66.

A. Volun-

A. Voluntary examination of a woman with child of a baſtard; by 6 G. 2. c. 31.

Weſtmorland. THE *voluntary examination of* A. M. *of* ——— *in the ſaid county, ſinglewoman, taken on oath, before me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, this* ——— *day of* ———.

Who ſaith, that ſhe is now with child, and that the ſaid child is likely to be born a baſtard, and to be chargeable to the pariſh of ——— *in the ſaid county, and that* A. F. *of* ——— *in the ſaid county, weaver, is the father of the ſaid child.*

The mark of
† A. M.

Taken and ſigned the day and year abovewritten, before me

J. P.

Note; Theſe ſame forms will ſerve, with a very little variation, *after* the birth of the child.

B. Warrant for apprehending the reputed father, before the birth; on 6 G. 2. c. 31.

Weſtmorland. { To the conſtable of ———.

WHEREAS A. M. *of* ——— *in the ſaid county, ſinglewoman, hath by her voluntary examination taken in writing upon oath, before me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, this preſent day declared herſelf to be with child, and that the ſaid child is likely to be born a baſtard, and to be chargeable to the pariſh of* ——— *in the ſaid county, and that* A. F. *of* ——— *in the ſaid county, weaver, is the father of the ſaid child; And whereas* O. P. *one of the overſeers of the poor of the pariſh of* ——— *aforeſaid, in order to indemnify the ſaid pariſh in the premiſſes, hath applied to me to iſſue my warrant for the apprehending of the ſaid* A. F. *I do therefore hereby command you, immediately to apprehend the ſaid* A. F. *and to bring him before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to find ſecurity to indemnify the ſaid pariſh of* ——— *or elſe to find ſufficient ſurety for his appearance at the next general quarter ſeſſions* [or, *next general ſeſſions*] *of the peace to be holden for the ſaid county, then and there to abide and perform ſuch order or orders as ſhall be made, in purſuance of an act paſſed in the eighteenth year of the reign of her late majeſty queen* Elizabeth, *concerning baſtards begotten and born out of lawful matrimony. Given under my hand and ſeal, the* ——— *day of* &c.

C. Com-

C. Commitment thereupon; by the 6 G. 2. c. 31.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction [or, common gaol] at ——— in the ſaid county.

WHEREAS A. M. *of* ——— *ſinglewoman, in her voluntary examination taken in writing and upon oath, the* ——— *day of* ——— *now laſt paſt, before me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, hath declared herſelf to be with child, and that the ſaid child is likely to be born a baſtard, and to be chargeable to the ſaid pariſh of* ——— *and hath charged* A. F. *of* ——— *gentleman, with having gotten her with child of the ſaid child; And whereas the ſaid* A. F. *being now perſonally preſent before me, being brought by my warrant, upon application for that purpoſe to me made, by* O. P. *one of the overſeers of the poor of the ſaid pariſh, hath refuſed to give ſecurity to indemnify the ſaid pariſh, and hath alſo refuſed to enter into a recognizance with ſufficient ſurety, upon condition to appear at the next general quarter ſeſſions* [or, *next general ſeſſions*] *of the peace to be holden for the ſaid county, and to abide and perform ſuch order or orders as ſhall be made in purſuance of an act paſſed in the eighteenth year of the reign of her late majeſty queen* Elizabeth, *concerning baſtards begotten and born out of lawful matrimony: Theſe are therefore to command you the ſaid conſtable, to take and convey the ſaid* A. F. *to the houſe of correction at* ——— *in the ſaid county, and to deliver him to the keeper thereof, together with this warrant. And I do hereby command you the ſaid keeper of the ſaid houſe of correction, to receive the ſaid* A. F. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep, until he ſhall give ſuch ſecurity, or enter into ſuch recognizance as aforeſaid, or be otherwiſe lawfully delivered from thence. Given under my hand and ſeal the* ——— *day of* &c.

D. Bond to indemnify the pariſh.

KNOW *all men by theſe preſents, that we* A. F. *of* ——— *in the county of* ——— *gentleman, and* A. S. *of* ——— *yeoman, are held and firmly bound unto* ——— *churchwardens, and* ——— *overſeers of the poor of the pariſh of* ——— *in the ſaid county (in truſt for the pariſhioners of the ſaid pariſh) in* ——— *pounds of good and lawful money of* Great Britain, *to be paid to the ſaid* ——— *or their certain attorney, their executors, adminiſtrators, or aſſigns: To which payment well and truly to be made, we bind our ſelves, and each of us, jointly and ſeverally, and our and each and every of our heirs, executors, and adminiſtrators, firmly by theſe preſents; Sealed with our ſeals, and dated the* ——— *day of* ——— *in the* ——— *year of the reign of our ſovereign lord* George

the

the ſecond, of Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, and in the year of our lord* ———.

The condition of this obligation is ſuch, that whereas A. M. *of* ——— *ſinglewoman, hath in and by her voluntary examination, taken in writing and upon oath, before* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county of* ——— *declared that ſhe is with child, and that the ſaid child is likely to be born a baſtard, and to be chargeable to the ſaid pariſh of* ——— *and that the abovebounden* A. F. *is the father of the ſaid child; If therefore the ſaid* A. F. *and* A. S. *or either of them, their or either of their heirs, executors, or adminiſtrators, do and ſhall from time to time, and at all times hereafter, fully and clearly indemnify and ſave harmleſs, as well the above named churchwardens and overſeers of the poor of the ſaid pariſh of* ——— *and their ſucceſſors for the time being, as alſo all and ſingular the other pariſhioners and inhabitants of the ſaid pariſh of* ——— *which now are, or hereafter ſhall be for the time being, of and from all manner of coſts, taxes, rates, aſſeſſments, and charges whatſoever, for or by reaſon of the birth, education, and maintenance of the ſaid child, and of and from all actions, ſuits, troubles and other charges and demands whatſoever, touching or concerning the ſame, that then this preſent obligation to be void, otherwiſe of force.*

Signed, ſealed, and delivered (having been first duly ſtamped) in the preſence of — A. F. A. S.

E. Condition of a recognizance for the father to appear at ſeſſions; on 6 G. 2. *c.* 31.

THE *condition of this recognizance is ſuch, that if the ſaid* A. F. *do and ſhall appear at the next general quarter ſeſſions* [or, *the next general ſeſſions*] *of the peace to be holden for the ſaid county, and ſhall then and there abide and perform ſuch order or orders as ſhall be made in purſuance of an act paſſed in the eighteenth year of the reign of her late majeſty queen* Elizabeth, *concerning baſtards begotten and born out of lawful matrimony, upon the complaint of the churchwardens and overſeers of the poor of the pariſh of* ——— *in the ſaid county, for begetting a child on the body of* A. M. *ſinglewoman, which child is likely to be born a baſtard, and to be chargeable to the ſaid pariſh of* ——— *Then this recognizance to be void, otherwiſe of force.*

If it is after the birth, then ſay, For begetting a baſtard child, *born in the pariſh of* ——— *in the ſaid county, on the body of* A. M. *ſinglewoman, which child is now chargeable* [or, *likely to be chargeable*] *to the ſaid pariſh of* ——— *Then this recognizance to be void.*

F. Warrant

F. Warrant of the two next juſtices, for the mother, with a ſummons for the reputed father, to make the order of filiation and maintenance; on the 18 *El. c.* 3.

Weſtmorland. { To the conſtable of ———.

WHEREAS *information hath been made unto us* ——— *two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* Quorum, *and both of us reſiding next unto the limits of the pariſh church within the pariſh of* ——— *in the ſaid county, as well upon the complaint of the churchwardens and overſeers of the poor of the ſaid pariſh, as on the oath of* A. M. *of* ——— *ſinglewoman, that on the* ——— *day of* ——— *laſt paſt, ſhe the ſaid* A. M. *was delivered of a (male) baſtard child at* ——— *in the ſaid pariſh, and that* A. F. *of* ——— *in the ſaid county, taylor, is the father of the ſaid baſtard child, and that the ſaid baſtard child is now living, and chargeable* [or, *likely to be chargeable*] *to the ſaid pariſh of* ——— *Theſe are therefore to command you to bring the ſaid* A. M. *before us, at the houſe of* ——— *in* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the afternoon of the ſame day, to be by us further examined, touching the premiſſes; And that you give notice thereof, unto the ſaid* A. F. *that he may likewiſe be at the time and place aforeſaid, to make his lawful defence: To the end that upon the examination of the cauſe and circumſtance, we may take ſuch order therein, as to right doth appertain. And what you ſhall do in the execution hereof, you are to make known unto us at the time and place aforeſaid. Given under our hands and ſeals the* ——— *day of* &c.

G. Order of filiation and maintenance, for the reaſons there ſpecified, is inſerted in the body of the title aforegoing.

H. Condition of a recognizance to appear at the ſeſſions, after the order not performed; on 18 *El. c.* 3.

WHEREAS *by an order under the hands and ſeals of us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, one whereof is of the* Quorum, *and both of us reſiding* [*in*, or] *next unto the limits of the pariſh church within the pariſh of* ——— *in the ſaid county,* A. F. *of* ——— *in the ſaid county, taylor, is adjudged to be the reputed father of a baſtard child born lately of the body of* A. M. *of* ——— *ſinglewoman, at* ——— *in the*

the ſaid pariſh of ——— [*And then ſet forth what was ordered therein further*] *And whereas the ſaid* A. F. *hath not obſerved nor performed the ſaid order*;

The condition therefore of this recognizance is ſuch, that if the abovebound A. F. *ſhall obſerve and perform the ſaid order, or ſhall perſonally appear at the next general ſeſſions of the peace, to be holden in and for the ſaid county, and ſhall then and there abide ſuch order as ſhall be then made by the court, concerning the ſaid baſtard child, if any ſuch order ſhall be then made; and if no ſuch order ſhall be then made or taken by the ſaid court, if the ſaid* A. F. *do and ſhall perform the order already by us made as aforeſaid: Then this recognizance to be void.*

Battery. See **Aſſault.**

Bawdy houſes. See **Lewdneſs.**

Beer. See **Exciſe.**

Behaviour. See **Surety.**

Bent.

WHEREAS on the north weſt coaſts of *England*, and eſpecially in the county of *Lancaſter*, the ſea is bounded, and the lands are prevented from being overflowed, by large hills, the ſand of which is ſo looſe, that in dry weather it is thrown by the winds on the adjacent lands, to the damage thereof, and the danger of the inhabitants, who are expoſed thereby to the inundation of the ſea; to prevent which, the land owners are at great charges annually to plant and maintain a ſort of ruſh or ſhrub called *ſtarr* or *bent*; but many diſorderly perſons pluck up and carry away the ſame, to make matts and bruſhes: Therefore if any perſon, without conſent of the owner, ſhall cut, pull up, or carry away any ſtarr or bent off the ſaid hills on the north weſt coaſts of *England*, on complaint thereof on oath to one juſtice, the offender ſhall be ſummoned, and on default of appearing, the juſtice ſhall iſſue his warrant to apprehend and bring him before him; and being convicted on oath of one witneſs, or confeſſion, he ſhall forfeit 20*s.* half to the informer, and half to the owner of the bent, by diſtreſs; and for want of ſufficient diſtreſs, to be ſent to the houſe of correction for three months, to be kept to hard labour; and for a ſecond offence, to be committed to the houſe of correction for one year, to be whipt and kept to hard labour.

And if any ſtarr or bent ſhall be found within five miles of the ſaid ſand hills, the perſons convicted of having the ſame in cuſtody ſhall forfeit 20*s.* in like manner, and for want of ſufficient diſtreſs

ſhall

ſhall ſuffer three months impriſonment, and hard labour in the houſe of correction.

But this ſhall not reſtrain any perſons from the exerciſe of any ancient preſcriptive right, to cut ſtarr or bent on the ſea coaſts in the county of *Cumberland*. 15 & 16 G. 2. *c.* 33. *ſ.* 6, 7, 8.

Bigamy.

AS *bigamy* in our law ſeems for the moſt part to be uſed to ſignify the having of two wives ſucceſſively one after the other, I ſhall take the liberty to transfer the offence which is commonly treated of under this title unto the title **Polygamy**, which ſignifies more properly the having two or more wives or huſbands at the ſame time.

Billets. See Fuel.

Black act.

IN order to avoid repeating the ſame regulations ſo many times over, as the offences hereunder mentioned are treated of under their reſpective titles in the different parts of this book; it is thought proper, to inſert here at large, the whole law relating to them all together, and to refer from thence to this title for the knowledge of the ſeveral particulars.

By the 9 G. *c.* 22. (commonly called the *Black act*) the which is required to be read at every ſeſſions and leet; and by the 6 G. 2. *c.* 37. and the 10 G. 2. *c.* 32. which are incorporated with the Black act, and therewith have continuance (by 24 G. 2. *c.* 57.) to *Sep.* 1. 1757, *&c.* and by the 27 G. 2. *c.* 15. it is enacted as followeth:

If any perſon or perſons, being armed with ſwords, fire-arms, or other offenſive weapons, and having his or their faces blacked, or being otherwiſe diſguiſed, ſhall (1) appear in any foreſt, chaſe, park, paddock, or grounds incloſed with any wall, pale, or other fence, wherein any deer have been or ſhall be uſually kept, or (2) in any warren or place where hares or conies have been or ſhall be uſually kept, or (3) in any high road, open heath, common, or down; or (4) ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer; or (5) unlawfully rob any warren or place where conies or hares are uſually kept; or (6) ſhall unlawfully ſteal or take away any fiſh out of any river or pond:

Or if any perſon or perſons *(that is, whether armed and diſguiſed or not)* ſhall (7) unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of the king's foreſts or chaſes, which are or ſhall be incloſed with pales, rails, or other fences; or in any park, paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or (8) ſhall unlawfully and maliciouſly break down the head or mound of any fiſh pond, whereby the fiſh ſhall be loſt or deſtroyed; or (9) ſhall unlawfully and maliciouſly kill, maim, or wound any cattle; or (10) cut down or otherwiſe deſtroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or (11) ſhall ſet fire to any houſe, barn, or outhouſe, or to any hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood; or (12) ſhall wilfully and maliciouſly ſhoot at any perſon in any dwelling houſe, or other place; or (13) ſhall knowingly ſend any letter, without any name ſubſcribed thereto, or ſigned with a fictitious name, demanding money, veniſon, or other valuable thing; [or threatening to kill or murder any of his majeſty's ſubjects, or to burn their houſes, outhouſes, barns, ſtacks of corn or grain, hay or ſtraw; 27 *G.* 2. *c.* 15.] or (14) ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon, for any the ſaid offences; or (15) ſhall by gift or promiſe of money, or other reward, procure any of his majeſty's ſubjects to join him or them in any ſuch unlawful act; or (16) ſhall unlawfully and maliciouſly break down, or cut down the bank of any river, or any ſea bank, whereby any lands ſhall be overflowed or damaged; or (17) ſhall unlawfully and maliciouſly cut any hop binds growing on poles in any plantation of hops; or (18) ſhall wilfully and maliciouſly ſet on fire, or cauſe to be ſet on fire, any mine, pit, or delph of coal or cannel coal:

Every perſon ſo offending, being thereof lawfully convicted (in any county in *England*) ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Note; I have added the words above *(whether armed and diſguiſed or not)* to obviate an error, as I take it, which runs thro' moſt of the books, in a very material part of this ſtatute. They do ſuppoſe that a perſon muſt be *armed and diſguiſed* to commit any of the offences abovementioned, even the ſending of a threatning letter, or perſuading another to be an accomplice; whereas it ſeemeth ſomewhat clear, that to be armed and diſguiſed is only neceſſary to conſtitute any of the ſix firſt offences, and that any perſon whatſoever may be guilty of any of the other following offences, whether armed and diſguiſed or not.

And for the more eaſy and ſpeedy bringing the offenders to juſtice, if any perſon ſhall be charged with being guilty of any the ſaid offences, before any two juſtices where the offence ſhall be committed, by information of one or more credible perſons on oath by them to be ſubſcribed, the ſaid juſtices ſhall forthwith certify under their hands and ſeals, and return ſuch information to

one of the principal ſecretaries of ſtate; who ſhall lay the ſame, as ſoon as conveniently may be, before the king in his privy council: whereupon the king may make order in ſuch his council, requiring the offender to ſurrender himſelf in forty days, to any of the juſtices of the king's bench, or to any juſtice of the peace, to the end that he may be forthcoming to anſwer the ſaid offence according to due courſe of law; which order ſhall be printed and publiſhed in the next gazette, and ſhall be forthwith tranſmitted to the ſheriff of the county where the offence was committed, and ſhall (in ſix days after receipt thereof) be proclaimed by him or his officers, between ten and two of the clock, in the market places, on the market days, of two market towns in the county, near the place where the offence was committed; and a true copy of ſuch order ſhall be affixed upon ſome publick place in ſuch market towns: And if ſuch offender ſhall not ſurrender himſelf purſuant to ſuch order, he ſhall from the day appointed for his ſurrender, be adjudged convicted and attainted of felony, and ſhall ſuffer pains of death, as in caſe of a perſon convicted and attainted by verdict and judgment of felony, without benefit of clergy. And the court of king's bench, or judges of aſſize, on producing to them ſuch order in council, under the ſeal of the ſaid council, may award execution accordingly.

And if any perſon, after the time appointed for ſurrender ſhall be expired, ſhall conceal, aid, abet, or ſuccour ſuch offender, knowing him to have been ſo charged, and to have been required to ſurrender himſelf by ſuch order, and ſhall be lawfully convicted thereof; he ſhall be guilty of felony without benefit of clergy.

But this ſhall not hinder any judge, juſtice of the peace, magiſtrate, officer, or miniſter of juſtice, from apprehending and ſecuring ſuch offender, by the ordinary courſe of law: And if he be taken and ſecured before the time of ſurrender, he ſhall have his trial by due courſe of law.

And the inhabitants of the hundred ſhall make ſatisfaction (not exceeding 200 *l.*) for the damages ſuſtained by the killing or maiming of cattle; cutting down or deſtroying trees; ſetting fire to any houſe, barn, or outhouſe, hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood; breaking or cutting down the bank of any river, or any ſea bank, whereby any lands ſhall be overflowed or damaged; cutting hop-binds growing on poles in any plantation of hops; ſetting on fire, or cauſing to be ſet on fire, any mine, pit, or delph of coal or cannel coal; the ſame to be rateably taxed and levied, as in caſes of robbery by the ſtatute of 27 *El. c.* 13.

But no perſon ſhall be inabled to recover damages, unleſs he ſhall by himſelf or ſervant, in two days after the damage done, give notive of the offence unto ſome of the inhabitants of ſome town, village, or hamlet near to the place where the fact was committed; and ſhall, in four days after ſuch notice, give in his examination on oath, or the examination on oath of his ſervant who had the care of the ſame, before a juſtice inhabiting in or near the hundred, whether he knows the perſon or perſons that

committed the fact, or any of them; and if upon such examination it be confessed, that the examinant knows the said persons or any of them, then such person confessing shall be bound by recognizance to prosecute the offender by indictment or otherwise according to law.

And if an offender be apprehended and lawfully convicted, in six months after the offence committed, the hundred shall not be liable.

And the action shall not be commenced but within one year after the offence committed.

And if any person shall apprehend, or cause to be convicted, any such offender abovementioned, and shall be killed, or wounded so as to lose an eye, or the use of any limb, in apprehending or securing, or endeavouring to apprehend or secure any such offender; on proof thereof made at the sessions where the offence was committed, or the party killed or wounded, by the person so apprehending and causing the offender to be convicted, or the person so wounded, or the executors or administrators of the party killed, the justices shall give a certificate thereof to the person wounded, or to the executors or administrators of the person killed; by which they shall be intitled to receive of the sheriff 50 *l.* to be allowed in his accounts; which he shall pay in thirty days from the time the certificate shall be shewed to him, on pain of forfeiting to the party 10 *l.* for which, and for the penalty, the party may bring his action.

Black lead.

IT having been found by experience, that wad, or black cawke, commonly called black lead, is necessary for divers useful purposes, and more particularly in the casting of bomb shells, round shot, and cannon balls, and that the same hath been discovered in one mountain or ridge of hills only in this realm, and great destruction having been made thereof of late years by evil disposed persons; therefore it is enacted, that every person who shall unlawfully break, or by force enter into, any mine or wad hole of wad or black cawke, commonly called black lead, or into any pit, shaft, or vein thereof; or shall unlawfully take and carry away from thence any wad, black cawke, or black lead; or shall aid, hire, or command any person to commit any the said offences, shall be guilty of felony, and the court or judge may order him to be committed to prison, or the house of correction not exceeding one year, to be kept to hard labour, and to be publickly whipt by the common hangman, or by the master of such house of correction, at the times, and places, and in such manner as the court shall think proper; or he may be transported for a term not exceeding seven years; and if he shall voluntarily escape, or break prison, or return from transportation before the

time, he ſhall be guilty of felony without benefit of clergy. 25 G. 2. c. 10. ſ. 1.

And if any perſon ſhall buy or receive any ſuch wad, knowing the ſame to be unlawfully taken and carried away as aforeſaid, he ſhall be guilty of felony, and be liable to all the penalties inflicted by the laws on perſons knowingly buying or receiving ſtolen goods. ſ. 3.

Blaſphemy and profaneneſs.

Blaſphemy.

1. ALL blaſphemies againſt god, as denying his being or providence; and all contumelious reproaches of Jeſus Chriſt; all profane ſcoffing at the holy ſcriptures, or expoſing any part of them to contempt or ridicule; impoſtures in religion, as falſely pretending to extraordinary commiſſions from god, and terrifying or abuſing the people with falſe denunciations of judgments; and all open lewdneſs groſsly ſcandalous — are puniſhable by fine and impriſonment, and alſo ſuch corporal puniſhment as to the court ſhall ſeem meet, according to the heinouſneſs of the crime. 1 *Haw.* 6, 7.

Depraving the eſtabliſhed religion.

2. Alſo ſeditious words, in derogation of the eſtabliſhed religion, are indictable, as tending to a breach of the peace. 1 *Haw.* 7.

Denying the trinity.

3. No perſon ſhall have any benefit of the toleration act, who ſhall deny in his preaching or writing, the doctrine of the bleſſed trinity, as it is ſet forth in the 39 articles. 1 *W. Seſſ.* 1. *c.* 18. *ſ.* 17.

Repreſenting the deity in ſtage plays.

4. If any perſon ſhall in any ſtage play, interlude, ſhew, maygame, or pageant, jeſtingly or profanely ſpeak or uſe the holy name of god, or of Chriſt Jeſus, or of the holy ghoſt, or of the trinity; he ſhall forfeit 10 *l.* half to the king, and half to him that ſhall ſue. 3 *J.* *c.* 21.

Chriſtians depraving the chriſtian religion.

5. If any perſon having been educated in, or at any time having made profeſſion of the chriſtian religion in this realm, ſhall by writing, printing, teaching, or adviſed ſpeaking, deny any one of the perſons in the holy trinity to be god; or ſhall aſſert or maintain there are more gods than one; or ſhall deny the chriſtian religion to be true, or the holy ſcriptures to be of divine authority; and ſhall be convicted thereof, in any of the courts at *Weſtminſter*, or at the aſſizes, on the oaths of two witneſſes, he ſhall for the firſt offence be incapable to have any office eccleſiaſtical, civil, or military (unleſs he ſhall renounce ſuch opinion in the court where he was convicted within four months after ſuch conviction); and for the ſecond offence, he ſhall be diſabled to be plaintiff, guardian, executor, or adminiſtrator, to take any gift or legacy, or to bear any office, and ſhall be impriſoned for three years. 9 & 10 *W.* *c.* 32.

But

But no perſon ſhall be proſecuted for any words ſpoken, unleſs the information be given to a juſtice of the peace, within four days after the words ſpoken, and the proſecution of ſuch offence be within three months after ſuch information. *id.*

6. *M.* 1 *G.* 2. *K.* and *Curl.* An information was exhibited by the attorney general, againſt *Edmond Curl*, for printing and publiſhing *(obſcænum libellum)* an obſcene book, called *Venus in the cloiſter*, or *the nun in her ſmock*, ſetting out the ſeveral lewd paſſages, and concluding againſt the peace. And of this the defendant was found guilty. It was moved in arreſt of judgment, that however the defendant may be puniſhable for this in the ſpiritual court, as an offence againſt good manners; yet it cannot be a libel, for which he is puniſhable in the temporal courts. But after long debate and conſideration, the court at laſt gave it as their unanimous opinion, that this was a temporal offence; and the defendant was ſet in the pillory. *Str.* 788. Caſe of Edmond Curl.

7. *E.* 2 *G.* 2. *K.* and *Woolſton.* He was convicted on four informations, for his blaſphemous diſcourſes on the miracles of our ſaviour. And attempting to move in arreſt of judgment, the court declared they would not ſuffer it to be debated, whether to write againſt chriſtianity *in general* was not an offence puniſhable in the temporal courts at common law: They deſired it might be taken notice of, that they laid their ſtreſs upon the word *general*, and did not intend to include diſputes between learned men upon particular controverted points. The next term he was brought up, and fined 25 *l.* for each of his four diſcourſes, to ſuffer a year's impriſonment, and to enter into a recognizance for his good behaviour during his life, himſelf in 3000 *l.* and 2000 *l.* by others. *Str.* 834. Caſe of Thomas Woolſton.

8. In the year 1656, *James Nayler* for perſonating our ſaviour, and ſuffering his followers to worſhip him, and pay him divine honours, was ſentenced to be ſet in the pillory, and to have his tongue bored thro' with a red hot iron, and to be whipped, and ſtigmatized in the forehead with the letter B. Caſe of James Nayler.

9. All perſons in or belonging to his majeſty's ſhips or veſſels of war, being guilty of profane oaths, curſings, execrations, drunkenneſs, uncleanneſs, or other ſcandalous actions, in derogation of god's honour, and corruption of good manners, ſhall incur ſuch puniſhment as a court martial ſhall think fit to impoſe. 22 *G.* 2. *c.* 33. *Art.* 2. Navy.

For profane curſing and ſwearing, ſee title **Swearing.**

Blood corrupted. See **Forfeiture.**

Bone-lace. See **Buttons.**

Books.

IF any book ſhall be taken or otherwiſe loſt out of any parochial library; any juſtice may grant his warrant to ſearch for it; and if it ſhall be found, it ſhall by order of ſuch juſtice be reſtored to the library. 7 *An. c.* 14. *ſ.* 10.

Books popiſh. See Popery.

Bows. See Game.

Brandy. See Exciſe.

Brass. See Pewter.

Bread.

NOTE; The ſtatutes hereafter following of 8 *An. c.* 18. 1 *G. ſt.* 2. *c.* 26. and 22 *G.* 2. *c.* 46. are but temporary, and by the laſt mentioned act of 22 *G.* 2. have continuance to *Sep.* 1. 1757, *&c.*

Conſpiring to raiſe the price.

1. If any bakers ſhall conſpire not to ſell bread but at certain prices; every ſuch perſon ſhall forfeit 10 *l.* for the firſt offence; and if not paid in ſix days, he ſhall be impriſoned twenty days, and have only bread and water for his ſuſtenance; for the ſecond offence 20 *l.* or the pillory; and for the third offence 40 *l.* or the pillory, and loſs of an ear, and to become infamous. And the ſeſſions or leet may hear and determine the ſame. 2 *&* 3 *Ed.* 6. *c.* 15.

Aſſize to be ſet.

2. The mayor, or chief magiſtrate, and where there are none ſuch, two juſtices ſhall from time to time ſet the aſſize and weight of bread, having regard to the price of the grain, and making reaſonable allowance to the bakers; which ſhall be ſet in *averdupois*, and not *troy* weight, according to the following table:

The

The penny loaf.

Price of the bushel of wheat and baking.		White		Wheaten		Houshold		Price of the bushel of wheat and baking.		White		Wheaten		Houshold	
s.	d.	oz.	dr.	oz.	dr.	oz.	dr.	s.	d.	oz.	dr.	oz.	dr.	oz.	dr.
2	0	23	3	34	12	46	5	8	3	5	10	8	7	11	4
2	3	20	10	30	14	41	3	8	6	5	7	8	3	10	14
2	6	18	9	27	13	37	1	8	9	5	5	7	15	10	9
2	9	16	14	25	4	33	11	9	0	5	2	7	12	10	5
3	0	15	7	23	3	30	14	9	3	5	0	7	8	10	0
3	3	14	4	21	6	28	8	9	6	4	14	7	5	9	12
3	6	13	4	19	14	26	8	9	9	4	12	7	2	9	8
3	9	12	6	18	9	24	11	10	0	4	10	6	15	9	4
4	0	11	9	17	6	23	3	10	3	4	8	6	13	9	1
4	3	10	14	16	6	21	13	10	6	4	7	6	10	8	13
4	6	10	5	15	7	20	10	10	9	4	5	6	7	8	10
4	9	9	12	14	10	19	8	11	0	4	3	6	5	8	7
5	0	9	4	13	14	18	9	11	3	4	2	6	3	8	4
5	3	8	13	13	4	17	10	11	6	4	0	6	1	8	1
5	6	8	7	12	10	16	14	11	9	3	15	5	15	7	14
5	9	8	1	12	1	16	2	12	0	3	14	5	13	7	12
6	0	7	12	11	9	15	7	12	3	3	13	5	11	7	9
6	3	7	7	11	2	14	13	12	6	3	11	5	9	7	7
6	6	7	2	10	11	14	4	12	9	3	10	5	7	7	4
6	9	6	14	10	5	13	12	13	0	3	9	5	6	7	2
7	0	6	10	9	15	13	4	13	3	3	8	5	4	7	0
7	3	6	6	9	9	12	13	13	6	3	7	5	2	6	14
7	6	6	3	9	4	12	6	13	9	3	6	5	1	6	12
7	9	6	0	9	0	11	15	14	0	3	5	4	15	6	10
8	0	5	13	8	11	11	9	14	3	3	4	4	14	6	8
								14	6	3	3	4	13	6	6
								14	9	3	2	4	11	6	5
								15	0	3	1	4	10	6	3

8 An. c. 18. f. 2.

3. Explanation of the foregoing table:

In the first column is the price of the bushel of wheat, from 2*s.* to 15*s.* a bushel, the allowance of the magistrates to the baker for baking being included; and in the other columns is the weight of the several loaves: So that, for example, if the price of wheat is 5*s.* a bushel, and the magistrates allow 1*s.* 6*d.* to the baker for baking, then opposite to 6*s.* 6*d.* in the first column, Explanation of the foregoing table.

column, will be found the weight of the ſeveral loaves; but if the price is 3*s*. a buſhel, and the allowance 1*s*. then the weight of the ſaid loaves will be found over againſt 4*s*. and ſo of the reſt.

By which table may eaſily be aſcertained the weight of larger loaves, by addition; as for example, a two penny loaf (when wheat is at the ſame rate) is twice as much as the penny loaf, the ſix penny loaf ſix times as much, and the eighteen penny loaf eighteen times as much.

Note; The white loaves are half, and the wheaten three quarters of the weight of houſhold loaves.

Price of corn to be certified.

4. And that the aſſize may be truly ſet, the prices of grain, meal, and flour in the adjacent markets ſhall be certified to the ſaid magiſtrates reſpectively, on oath, by the clerks of the market, or ſuch other perſon or perſons as they ſhall appoint. 1 *G. ſt.* 2. *c.* 26. *ſ.* 7.

Bread to be marked.

5. And the ſaid officers may direct, how each ſort ſhall be marked, for knowing the baker, price, weight, and ſort. 8 *An. c.* 18. *ſ* 3.

Letters thereon.

6. And more particularly, the maker of bread for ſale ſhall imprint on every loaf of white bread a large Roman W; of wheaten bread, a large Roman W H; of houſhold bread, a large Roman H; on pain of 20*s*. to the informer, on conviction by confeſſion or oath of one witneſs, before ſuch chief magiſtrate or one juſtice, to be levied by way of diſtreſs; the proſecution to be commenced in three days, and the conviction to be certified to the next ſeſſions, to be there kept on record, and to be ſeen without fee. 22 *G.* 2. *c.* 46. *ſ.* 21.

Other regulations.

7. And they ſhall make ſuch other rules for regulating the baking of bread, and all things concerning the ſame, as they ſhall find convenient. 8 *An. c.* 18. *ſ* 3.

Mixing grain.

8. And if any baker ſhall put into bread any mixture of any other grain than what is appointed by the aſſize; he ſhall forfeit 20*s*. in like manner. 8 *An. c.* 18. *ſ.* 3, 4, 5, 7.

Want of weight.

9. And if any baker or other ſhall bake, ſell, or expoſe to ſale any bread deficient in weight one ounce or more; and be convicted (A) thereof in like manner, he ſhall forfeit to the informer 5*s*. for every ounce wanting; and if there want leſs than an ounce 2*s*. 6*d*. Complaint to be made in 24 hours within the bills, and within three days elſewhere. 1 *G. ſt.* 2. *c.* 26. *ſ.* 5.

Searching and weighing.

10. And the mayor, chief magiſtrate, or juſtice may in the day time enter any houſe, ſhop, ſtall, bakehouſe, warehouſe, or outhouſe of any baker or ſeller of bread, to ſearch for, view, and try the bread; and if any be deficient either in ſort, goodneſs, baking, working, weight, or marking, they may ſeize the ſame, and give it to the poor: Any baker or ſeller reſiſting, ſhall forfeit to the informer 40*s*. in like manner. 8 *An. c.* 18. *ſ.* 8.

General penalty.

11. As to other defaults in general; a baker not obſerving ſuch regulations as ſhall be made as above, ſhall on conviction (as before) forfeit to the informer 40*s*. to be levied by way of diſtreſs. 8 *An. c.* 18. *ſ.* 3.

12. Any party aggrieved may appeal in writing to the next seſſions: and the court may award coſts to the proſecutor, and commit the offender till he pay the coſts, and alſo the penalty; they may alſo award coſts to the appellant, to be recovered in like manner. 8 *An. c.* 18. *ſ.* 6. Appeal.

13. Any magiſtrate omitting his duty herein, ſhall forfeit 20 *s.* to be recovered by action at law. 8 *An. c.* 18. *ſ.* 7. Magiſtrate omitting his duty.

14. But nothing herein ſhall prejudice the right or cuſtom of the city of *London*; or the lord of any leet, to ſet, inquire, and puniſh the breach of aſſize of bread, within the leet or view of frankpledge; nor of the clerk of the market. 8 *An. c.* 18. *ſ.* 10. Exceptions.

15. By the 3 *G.* 2. *c.* 29. *ſ.* 2. If any ſhall ſell or expoſe to ſale any peck, half peck, or quartern loaf at a higher price than is ſet by the aſſize, he ſhall forfeit 10 *s.* in like manner as above. Peck loaves included in the aſſize.

But it is to be obſerved, that this act hath not continuance with the others abovementioned; but yet it ſhews the ſenſe of the legiſlature, that peck, half peck, and quarter loaves may be included within the aſſize, altho' not mentioned particularly in the table of aſſize in the act; and then the penalty for this offence (ſuppoſing this clauſe is expired) will be comprehended within the general clauſe of offences againſt the magiſtrates regulations abovementioned.

16. Mr. *Barlow*, on conſideration of the whole, makes a doubt, whether the penalties can be levied, or the bread be forfeited, if there be no previous aſſize ſet; and with good reaſon: ſince it is hard to determine that bread is under weight, or exceeds in price, when no price or weight is fixed, and when the value neither of the corn nor labour is aſcertained. No penalty where the aſſize is not ſet.

A. Conviction, and warrant to levy the penalty and diſtribute the bread to the poor; on 8 *An. c.* 18. and 1 *G. ſt.* 2. *c.* 26.

Weſtmorland. { To the conſtable of &c.

WHEREAS A. I. *of* ——— *in the ſaid county, yeoman, came this day before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, and made information on oath, that* A. O. *of* ——— *aforeſaid, yeoman, did this day expoſe to ſale nine ſixpenny loaves of bread deficient in their reſpective due weights, according to the aſſize of bread eſtabliſhed by a ſtatute made in the eighth year of the reign of her late majeſty queen* Anne, *and continued by ſeveral other ſubſequent ſtatutes; And whereas I did forthwith go to the ſhop of the ſaid* A. O. *in* ——— *aforeſaid, and the ſaid ſhop in the day time did enter, and there did find nine ſix penny loaves of wheaten bread, expoſed to ſale, and did cauſe the ſame to be ſeverally weighed, and found the ſame to be ſeverally deficient in their due weight one ounce each, according to the aſſize laſt ſettled in the ſaid town of* ——— *purſuant to the ſaid ſtatute made in the eighth year of the reign of her late majeſty queen* Anne: *I do therefore hereby adjudge the*

the ſaid A. O. *to be guilty of the ſaid offence in manner aforeſaid, and that he hath forfeited the ſaid nine ſixpenny loaves for the uſe of the poor of the pariſh of* ——— *aforeſaid, within which pariſh the ſaid ſhop of the ſaid* A. O. *is: And I do hereby command you to take the ſaid nine loaves and diſtribute them amongſt the ſaid poor: And I do alſo adjudge, that by virtue of a ſtatute made in the firſt year of the reign of his late majeſty king* George *the firſt, the ſaid* A. O. *hath by reaſon of his ſaid offence incurred the forfeiture of* 45 s. *to the uſe of the ſaid* A. I. *Theſe are therefore to command you forthwith to diſtrain the goods and chattels of him the ſaid* A. O. *And if the ſaid ſum of* 45 s. *ſhall not be paid in* [*ſeven*] *days time from the taking of the ſaid diſtreſs, together with reaſonable charges of taking and keeping the ſame, that then you do ſell the ſaid goods and chattels ſo diſtrained, and out of the money ariſing by ſuch ſale pay to the ſaid* A. I. *the aforeſaid ſum of* ——— *rendring the overplus upon demand unto him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* &c.

Breaking gaol. See **Priſon breaking.**

Breaking open doors. See **Arreſt.**

Brewers. See **Exciſe.**

Bribery.

BRIBERY in a ſtrict ſenſe is taken for a great miſpriſion of one in a judicial place, taking any thing whatſoever, except meat and drink of ſmall value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only; and is puniſhable at the common law by fine and impriſonment. 1 *Hawk. c.* 67.

Bridges.

NOTE; This title treateth only of county bridges: Thoſe which are under the cognizance of the ſurveyor of the highways, as being repaired by the ſeveral pariſhes or diſtricts, are treated of under the title **Highways.**

I. Who ſhall repair.
II. Power of the leet to inquire thereof.
III. Power of the juſtices in ſeſſions.
IV. Concerning the 300 *foot at the ends of bridges.*
V. Indictment of bridges.
VI. Charges of repairing.
VII. Surveyors of the work.
VIII. Manner of repairing.
IX. Purchaſing lands adjoining.
X. Contracting for a term of years.

I. Who ſhall repair.

1. By the great charter, 9 *H.* 3. *c.* 15. *No town nor freeman ſhall be diſtrained to make bridges nor banks, but ſuch as of old time and of right have been accuſtomed.*

2. And none can be compelled to make new bridges, where never any were before, but by act of parliament. 2 *Inſt.* 701.

3. By the common law, ſome perſons (ſpiritual or temporal, corporate or not corporate) are bound to repair bridges by reaſon of the *tenure* of their lands or tenements; and ſome by reaſon of *preſcription* only:

By *tenure*, by reaſon that they and thoſe whoſe eſtate they have in the lands or tenements, are bound in reſpect thereof to repair the ſame. 2 *Inſt.* 700.

By reaſon of *preſcription* only; but herein there is a diverſity between bodies politick or corporate, ſpiritual or temporal, and natural perſons: for bodies politick or corporate, ſpiritual or temporal, may be bound by uſage and preſcription only, becauſe they are local, and have a ſucceſſion perpetual; but a natural perſon cannot be bound by act of his anceſtor, without a lien, or binding, and aſſets. 2 *Inſt.* 700.

And if a man make a bridge for the common good of all the ſubjects, he is not bound to repair it; for no particular man is bound to reparation of bridges by the common law, but by tenure or preſcription. 2 *Inſt.* 701.

4. And if none are bounden by tenure or preſcription at common law, then the whole county or franchiſe ſhall repair it. 2 *Inſt.* 701.

Concerning

Concerning which, it is enacted by the 22 *H.* 8. *c.* 5. as follows: *Whereas in many places it cannot be known and proved, what hundred, town, pariſh, perſon, or body politick ought to repair bridges broken in the highways; in every ſuch caſe, the ſaid bridges, if they be without a city, or town corporate, ſhall be made by the inhabitants of the county; if within a city or town corporate, then by the inhabitants of ſuch city or town corporate; if part be in one ſhire, city, or town corporate, and part in another, or part within the limits of a city or town corporate, and part without, the inhabitants of the ſhires, cities or towns corporate, ſhall repair ſuch part as lies within their limits.* ſ. 3.

Bridges broken in the highways] This extendeth only to common bridges in the king's highways, and not to private bridges to mills, or the like; the remedy in which caſe is not by indictment, but by action. 2 *Inſt.* 701.

Within a city or town corporate] It hath been queſtioned, whether a borough which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge. 1 *Haw.* 225.

5. A tenant at will of an houſe, which adjoins to a common bridge, is bound to repair the houſe, ſo that the publick be not prejudiced by the want of repair, altho' he be not bound to repair as to his landlord. L. *Raym.* 856.

6. The freehold of bridges is in him that hath the freehold of the ſoil; but the free paſſage is for all the king's liege people. 2 *Inſt.* 705.

II. Power of the leet to inquire thereof.

Decays of bridges are preſentable in the leet, or torn. 2 *Inſt.* 701.

III. Power of the juſtices in ſeſſions.

The juſtices, or four of them at the leaſt (1 Q.) ſhall have power to inquire, hear, and determine in the general ſeſſions, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make ſuch proceſs and pains upon every preſentment, againſt ſuch as ought to be charged to make or amend them, as the king's bench uſually doth, or as it ſhall ſeem by their diſcretions to be neceſſary and convenient, for the ſpeedy amendment of ſuch bridges. 22 H. 8. c. 5. ſ. 1.

Four of them at the leaſt] If the bridge be within a franchiſe, which hath not four juſtices, and a ſeſſions of its own, the juſtices of the county ſhall inquire: but if the franchiſe be a county of itſelf, and hath not four juſtices (1 *Q.*) it is not within this ſtatute, but is left to the remedy which it had at common law. 2 *Inſt.* 702.

And to make proceſs] Where the bridge is in one ſhire, and the perſons or lands which ought to be charged are in another ſhire; or

or where the bridge is within a city or town corporate, and the persons or lands that ought to be charged are out of the said city; the justices of such shire, city, or town corporate, shall have power to hear and determine such annoyances, being within the limits of their commission: and if the annoyance be presented, then to make process into every shire of the realm, against such as ought to repair the same, and to do further in every behalf, as they might do, if the persons or lands chargeable were in the same shire, city, or town corporate where the annoyance is. 22 *H.* 8. *c.* 5. *s.* 5.

As the king's bench usually doth] The presentment at common law, might be before the king's bench, or at the assizes. 2 *Inst.* 701.

IV. Concerning the 300 *foot at the ends of bridges.*

Such part and portion of the highways, as well within franchise as without, as lie next adjoining to any ends of any bridges, distant from any of the said ends by the space of 300 *foot, shall be made, repaired, and amended as often as need shall require; and the justices, or four of them* (1 Q.) *shall have power to enquire, hear and determine, in the general sessions, all manner of annoyances of and in such highways, so being and lying next adjoining to any ends of bridges, distant from any one of the ends of such bridges* 300 *foot, and to do in every thing concerning the making, repairing, and amending of such highways, in as ample manner as they may do for the making, repairing, and amending of bridges.* 22 H. 8. c. 5. s. 9.

V. Indictment of bridges.

1. *No money shall be applied to the repair of bridges, until presentment be made by the grand jury at the assizes or sessions, of their insufficiency, inconveniency, or want of reparation.* 12 G. 2. c. 29. s. 13.

2. An indictment for not repairing a bridge, ought to shew what sort of bridge it is, whether for carts and carriages, or for horses, or for footmen only. L. *Raym.* 1175.

3. If a man be indicted for that by reason of the tenure of certain lands he is bound to repair a bridge, it must be alledged where those lands lie. 2 *H. H.* 181.

4. Any particular inhabitant of a county, or tenant of land charged to the repairs of a bridge, may be made defendant to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court, for the default of repairs, and shall be put to his remedy at law for a contribution from those, who are bound to bear a proportionable share in the charge; for the necessity of the case requires the greatest expedition in cases of this nature. 1 *Haw.* 221.

5. It hath been resolved, that it is not sufficient for the defendants to an indictment for not repairing a bridge, to excuse themselves, by shewing either that they are not bound to repair the whole, or any part of the bridge, without shewing what other person

perſon is bound to repair the ſame; and it is ſaid, that in ſuch caſe the whole charge ſhall be laid upon ſuch defendants, by reaſon of their ill plea. 1 *Haw.* 221.

6. It ſeemeth, that no inhabitant of a county ought to be a juror, for the trial of an iſſue, whether the county be bound to ſuch repairs or not; and therefore the jury muſt come from ſome adjacent county: but by the ſtatute of 1 *An. ſt.* 1. *c.* 18. ſuch inhabitant may be a good witneſs. 1 *Haw.* 222.

7. *No fine, iſſue, penalty, or forfeiture, upon any preſentment or indictment for not repairing bridges, or the highways at the ends of bridges, ſhall be returned into the exchequer, but ſhall be paid to the treaſurer, to be applied towards the ſaid repairs, and not otherwiſe.* 1 An. ſt. 1. c. 18. ſ. 4.

8. *And no preſentment or indictment for not repairing bridges, or highways at the ends of bridges, ſhall be removed by* certiorari *out of the county into any other court.* 1 An. ſt. 1. c. 18. ſ. 5.

But a *certiorari* lies to remove an order made by the juſtices, concerning the repair of a bridge, purſuant to a private act of parliament; and the juſtices ought to return the private act upon which their order is founded. *Dalt.* 504.

E. 4 *G.* 2. *K.* and the inhabitants of *Hamworth.* Upon motion to quaſh a *certiorari* to remove an indictment againſt the defendants at ſeſſions, for not repairing a bridge; it was inſiſted, that by the 1 *An. c.* 18. the *certiorari* is taken away. To which it was anſwered, and reſolved by the court, that this act extended only to bridges where the county is charged to repair; and that where a private perſon or pariſh is charged, and the right will come in queſtion, the act of the 5 & 6 *W. c.* 11. had allowed the granting a *certiorari.* And therefore they refuſed to quaſh. *Str.* 900.

VI. Charges of repairing.

By the 12 *G.* 2. *c.* 29. The charges of repairing and amending bridges, and highways at the ends of bridges, ſhall be paid out of the general county rate. *ſ.* 1.

VII. Surveyors of the work.

The four juſtices in ſeſſions as aforeſaid may appoint two ſurveyors, with ſalaries, to ſee the bridges amended. 22 *H.* 8. *c.* 5. *ſ.* 4.

And this buſineſs of ſurveying the bridges, for the more convenience, is uſually annexed by the juſtices to the office of the high conſtables; for which they have by this clauſe power to allow them ſalaries.

VIII. Manner of repairing.

1. It ſeemeth to be clear, that thoſe who are bound to repair bridges, muſt make them of ſuch height and ſtrength, as ſhall be anſwerable to the courſe of the water, whether it continue in the old channel, or make a new one. 1 *Haw.* 221.

2. And

2. And perſons are not treſpaſſers, for entring on any adjoining land, for repairing bridges, or laying thereon the requiſite materials. 1 *Haw.* 221.

IX. Purchaſing lands adjoining.

The juſtices at their ſeſſions may purchaſe any parcel of land, adjoining or near to any county bridge, for the more commodious enlarging, or convenient rebuilding the ſame, not exceeding one acre, to be paid for by the treaſurer out of the county rates, by order under the hands and ſeals of the ſaid juſtices in their ſaid ſeſſions; which lands ſo purchaſed, ſhall be conveyed to ſuch perſon or perſons as the juſtices in the ſaid ſeſſions ſhall appoint, in truſt, for enlarging or rebuilding the ſaid bridges. 14 G. 2. c. 33.

X. Contracting for a term of years.

By the 12 G. 2. c. 29. ſ. 14. *When any publick bridges, ramparts, banks, or cops, are to be repaired at the expence of the county, the juſtices at their general or quarter ſeſſions, after preſentment made by the grand jury of their want of reparation, may contract with any perſon for rebuilding, repairing, and amending the ſame, for any term not exceeding ſeven years, at a certain annual ſum.*

In order to which they ſhall give publick notice of their intention of contracting with any perſon, for rebuilding, repairing, and amending the ſame.

And ſuch contracts ſhall be made at the moſt reaſonable price which ſhall be propoſed by the contractors; who ſhall give ſufficient ſecurity for the due performance thereof, to the clerk of the peace.

And all contracts when agreed to, and all orders relating thereto, ſhall be entred in a book to be kept by the clerk of the peace for that purpoſe; who ſhall keep the ſame amongſt the records of the county, to be inſpected by any of the juſtices at all ſeaſonable times, and by any perſon employed by any pariſh or place contributing to the ſame, without fee.

Indictment for a bridge out of repair.

BY *the oaths of* ——— *good and lawful men of the county aforeſaid, then and there ſworn and charged to inquire for our ſaid lord the king, and the body of the county aforeſaid, it is preſented, that a certain common bridge, over the river* ——— *commonly called* ——— *bridge, lying and being in the pariſh of* ——— *in the county aforeſaid, in the king's common highway there, leading from the market town of* ——— *to the market town of* ——— *in the ſaid county, altogether and from the time whereof the memory of man is not to the contrary, being a common king's highway for all the lieges and ſubjects of our ſaid lord the king and of his anceſtors, with their horſes, carts, and carriages to go, paſs, ride, and travel at their pleaſure, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was, and yet is in great decay, broken, and ruinous, ſo that the lieges and ſubjects of our ſaid lord the king, upon and over the ſaid*

said bridge with their horses, carts, and carriages could not and cannot go, pass, ride, and travel, without great danger, to the grievous damage and nusance of all the lieges and subjects of our said lord the king, upon and over the same bridge going, passing, riding, and travelling, and against the peace of our said lord the king, his crown and dignity.

And that A. O. *late of*—— *in the said county, gentleman, by reason of his tenure of certain lands lying in the parish of*—— *aforesaid, and elsewhere in the said county, ought to make, repair, and amend the said common bridge, as often as and when it shall be necessary.*

Buggery.

What it is. 1. BUGGERY (from the *Italian bugarone*, a buggerer, this vice being said to have been brought into *England* out of *Italy* by the *Lombards*) is a detestable and abominable sin, amongst christians not to be named, committed by carnal knowledge, against the ordinance of the creator, and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beast. 3 *Inst.* 58.

The punishment. 2. And by the statute of 25 *H.* 8. *c.* 6. Buggery committed with mankind or beast is made felony without benefit of clergy. And the justices of the peace may hear and determine the same, as in cases of other felonies.

Principal and accessary. 3. Which said statute making it felony generally, there may be accessaries both before and after. But those that are present, aiding and abetting, are all principals. And altho' none of the principals are admitted to their clergy, yet accessaries before and after are not excluded from clergy. 1 *H. H.* 670.

Infants. 4. If the party buggered be within the age of discretion (which is generally reckoned the age of 14), it is no felony in him, but in the agent only. But if buggery be committed upon a man of the age of discretion, it is felony in them both. 3 *Inst.* 59. 1 *H. H.* 670.

Navy. 5. By the articles of the navy (22 *G.* 2. *c.* 33.), if any person in the fleet shall commit the unnatural and detestable sin of buggery or sodomy, with man or beast; he shall be punished with death by the sentence of a court martial.

Pardon. 6. This crime is excepted out of the act of general pardon. 20 *G.* 2. *c.* 52. *s.* 17.

Bullion. See Coin.

Burglary.

Offences againſt the houſe of another, which fall ſhort of burglary, belong to title Larceny, under the head Larceny from the houſe.

I. What is burglary.
II. Reward for convicting a burglar.

I. What is burglary.

1. THE word *burglar* ſeemeth to have been brought unto us out of *Germany* by the *Saxons*, and to be derived of the *German burg*, a houſe, and *larron*, a thief, probably from the *Latin latro, latronis.* Derivation of burglary.

2. Burglary *is a felony at common law, in breaking and entring the manſion houſe of another, in the night, with intent to commit ſome felony within the ſame, whether the felonious intent be executed or not.* Hale's Pl. 79. Definition of burglary.

—*Breaking*] Every entrance into the houſe by a treſpaſſer, is not a breaking in this caſe; but there muſt be an actual breaking. As if the door of a manſion houſe ſtand open, and the thief enter, this is no breaking. So it is if the window of the houſe be open, and a thief with a hook or other engine draweth out ſome of the goods of the owner, this is no burglary, becauſe there is no actual breaking of the houſe. But if the thief breaketh the glaſs of the window, and with a hook or other engine draweth out ſome of the goods of the owner, this is burglary, for there was an actual breaking of the houſe. 3 *Inſt.* 64.

And Lord *Hale* ſays, theſe acts amount to an actual breaking; opening the caſement, or breaking the glaſs window, picking open the lock of a door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched. 1 *H. H.* 552.

M. 8 *G. K.* and *Gray.* One of the *ſervants* in the houſe opened his lady's chamber door (which was faſtened with a braſs bolt) with deſign to commit a rape; and it was ruled to be burglary, and the defendant was convicted and tranſported. *Strange* 481.

By the ſtatute of the 12 *An. c.* 7. If any perſon ſhall enter into the manſion houſe of another, by day or by night, without breaking the ſame, with an intent to commit felony, or being in ſuch houſe ſhall commit any felony, and ſhall in the night time break the ſaid houſe to get out, he ſhall be guilty of burglary, and ouſted of the benefit of clergy, in the ſame manner as if he had broken and entred the houſe in the night time, with intent to commit felony.

M. 4 *G.* 2. *Joſhua Cornwal*'s caſe. He was indicted with another perſon for burglary. And upon the evidence it appeared, that he was a ſervant in the houſe, where the robbery was committed,

mitted, and in the night time opened the ſtreet door, and let in the other priſoner, and ſhewed him the ſide board, from whence the other priſoner took the plate: then the defendant opened the door and let him out; but the defendant did not go out with him, but went to bed. Upon the trial it was doubted, whether this was burglary in the ſervant, he not *going out* with the other. But afterwards at a meeting of all the judges at *Serjeant's-inn*, they were all of opinion that it was burglary in both, and not to be diſtinguiſhed from the caſe where one watches at the ſtreet end, whilſt another goes in and commits the burglary, which hath been often ruled to be burglary in both: and upon report of this opinion the defendant was executed. *Strange* 881.

And entring] It is deemed an entry, when the thief breaketh the houſe, and his body, or any part thereof, as his foot, or his arm, is within any part of the houſe; or when he putteth a gun into a window which he hath broken, or into a hole of the houſe which he hath made, of intent to murder or kill; this is an entry and breaking of the houſe: but if he doth barely break the houſe, without any ſuch entry at all, this is no burglary. 3 *Inſt.* 64.

If divers come in the night to do a burglary, and one of them break and enter, the reſt of them ſtanding to watch, at a diſtance, this is burglary in all. 3 *Inſt.* 64.

The manſion houſe] This includes alſo churches, and the walls or gates of a walled town. 1 *Haw.* 103.

Mr. *Hawkins* ſays, all out-buildings, as barns, ſtables, dairy houſes, adjoining to a houſe, are looked upon as part thereof; and conſequently burglary may be committed in them: but if they be removed at any diſtance from the houſe, it ſeems that it hath not been uſual of late to proceed againſt offences therein as burglaries. 1 *Haw.* 104.

And Lord *Hale* ſays more explicitly, the manſion houſe doth not only include the dwelling houſe, but alſo the outhouſes that are parcel thereof, as barn, ſtable, cow houſe, dairy houſe, if they are parcel of the meſſuage, tho' they are not under the ſame roof, or joining contiguous to it; and ſo, he ſays, it was agreed by all the judges: but if they be no parcel of the meſſuage, as if a man take a leaſe of a dwelling houſe from one, and of a barn from another; or if it be far remote from the dwelling houſe, and not ſo near to it as to be reaſonably eſteemed parcel thereof, as if it ſtand a bow-ſhot off from the houſe, and not within or near the curtilage of the chief houſe, then the breaking of it is not burglary, for it is not a manſion houſe, nor any part thereof. 1 *H. H.* 558, 9.

To break and enter a *ſhop*, not parcel of the manſion houſe, in which the ſhopkeeper never lodges, but only works or trades there in the day time, is not burglary, but only larceny; but if he, or his ſervant, uſually or often lodge in the ſhop at night, it is then a manſion houſe, in which a burglary may be committed. 1 *H. H.* 557, 8.

It is not neceſſary, to make it burglary, that any perſon be actually in the houſe, at the very time of the offence committed. 1 *Haw.* 103.

In

In the night] As long as the day continues, whereby a man's countenance may be diſcerned, it is called day; and when darkneſs comes, and day light is paſt, ſo as by the light of day you cannot diſcern the countenance of a man, then it is called night. 3 *Inſt.* 63.

And this doth aggravate the offence; ſince the night is the time wherein man is at reſt, and wherein beaſts run about ſeeking their prey. Hence in ancient records, the twylight was ſignified, when it was ſaid, *inter canem & lupum* (between the dog and the wolf); for when the night begins, the dog ſleeps, and the wolf ſeeketh his prey. 3 *Inſt.* 63.

With intent to commit felony] There can be no burglary, but where the indictment both expreſly alledges, and the verdict alſo finds, an intention to commit ſome felony; for if it appear, that the offender meant only to commit a treſpaſs, as to beat the party, or the like, he is not guilty of burglary. 1 *Haw.* 105.

However, it ſeems the much better opinion, that an intention to commit a rape, or other ſuch crime, which is made felony by ſtatute, and was a treſpaſs only at common law, will make a man guilty of burglary, as much as if ſuch offence were a felony at common law; becauſe where ever a ſtatute makes any offence felony, it incidentally gives it all the properties of a felony at common law. 1 *Haw.* 105.

Whether the felonious intent be executed or not] Thus they are burglars, who break any houſe, or church, in the night, altho' they take nothing away. And herein this offence differs from robbery, which requires that ſomething be taken, tho' it is not material of what value.

Where a man commits burglary, and at the ſame time ſteals goods out of the houſe, it is alſo larceny; and if he be acquitted of the burglary, he may notwithſtanding be indicted of the larceny; for they are ſeveral offences, tho' committed at the ſame time. And burglary may be, where there is no larceny; and larceny may be, where there is no burglary. 2 *H. H.* 246.

3. By the 18 *El. c.* 7. and 3 *W. c.* 9. Benefit of clergy is taken away in caſes of burglary, both from the principal, and the acceſſary before; but in all caſes of burglary, acceſſaries after muſt have their clergy. 2 *H. H.* 364. 1 *Haw.* 357, 8. Puniſhment thereof.

4. All burglaries and robberies of churches are excepted out of the general pardon, of the 20 *G.* 2. *c.* 52. Pardon.

II. Reward for convicting a burglar.

1. It may be obſerved, in the firſt place, that it is provided by the 24 *H.* 8. *c.* 5. that there ſhall be no forfeiture of lands or goods, for killing any perſon that attempts to commit burglary. Indemnity for killing him.

But beſides this indulgence to a perſon killing ſuch an offender in defence of his houſe, there are ſpecial advantages and rewards for apprehending and convicting him in due courſe of law; which are as follows:

2. By the 25 *G.* 2. *c.* 36. The charges of proſecuting and convicting a burglar, ſhall be paid by the treaſurer of the county Charges of convicting him to be reimburſed.

where the burglary was committed, on producing to him the order of the court for that purpoſe, which the clerk of aſſize, or of the peace, ſhall make out, for the fee of 1 *s.* *ſ.* 11.

And alſo the charges of poor witneſſes appearing on their recognizance, by the 27 *G.* 2. *c.* 3. on paying 6 *d.* for the order: except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

Exemption from pariſh offices for taking and convicting him.

3. Every perſon who ſhall apprehend any one guilty of burglary and proſecute him to conviction, ſhall have a certificate, without fee, under the hand of the judge, certifying ſuch conviction, and within what pariſh or place the burglary was committed, and alſo that ſuch burglar was diſcovered and taken, or diſcovered or taken, by the perſon ſo diſcovering or apprehending; and if any diſpute ariſe between ſeveral perſons ſo diſcovering or apprehending, the judge ſhall appoint the certificate into ſo many ſhares to be divided among the perſons concerned, as to him ſhall ſeem juſt and reaſonable:

And if any perſon ſhall happen to be ſlain by ſuch burglar, in endeavouring to apprehend him, the executors or adminiſtrators of ſuch perſon ſlain ſhall have the like certificate:

Which certificate ſhall be inrolled by the clerk of the peace of the county in which it ſhall be granted; for which he ſhall have 1 *s.* and no more:

And the ſaid certificate may be once aſſigned over; and the original proprietor, or the aſſignee of the ſame, ſhall by virtue thereof be diſcharged from all manner of pariſh and ward offices, within the pariſh or ward where the felony was committed. 10 & 11 *W.* *c.* 23.

40 *l.* for taking and convicting.

4. And moreover, as a further reward, every perſon who ſhall apprehend any perſon guilty of burglary, and proſecute him to conviction, ſhall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the aſſizes, certifying the conviction, and in what pariſh the burglary was committed, and alſo that the burglar was taken by the perſon claiming the reward; and if any diſpute ſhall happen to ariſe between the perſons claiming, the judge ſhall by the ſaid certificate appoint the ſame to be paid amongſt the parties claiming the ſame, in ſuch ſhare and proportion as to him ſhall ſeem juſt and reaſonable:

And on tender of ſuch certificate to the ſheriff, and demand made, he ſhall pay to the perſon ſo intitled, the ſum of 40 *l.* without fee or deduction, within one month after ſuch tender and demand; on pain of forfeiting double, with treble coſts. 5 *An.* *c.* 31. 6 *G.* *c.* 23. *ſ.* 10.

40 *l.* to the executors of a perſon killed.

5. And if any watchman, or any other perſon, be killed, in endeavouring to apprehend any ſuch burglar, his executors or adminiſtrators ſhall have a certificate delivered under the hand and ſeal of the judge, or of the two next juſtices of the peace, of ſuch perſon being ſo killed; which certificate they ſhall, on ſufficient proof before them made, give without fee: whereupon, ſuch executor or adminiſtrator ſhall be intitled to receive the like ſum of 40 *l.* in like manner. 5 *An.* *c.* 31. *ſ.* 2.

6. And

6. And moreover, if any perſon, being out of priſon, ſhall commit any burglary, and afterwards diſcover two or more the like offenders, ſo as two or more be convicted; he ſhall have the like reward and allowance of 40 *l.* and alſo all other advantages which are given to perſons who ſhall apprehend and convict any the like offenders; and ſhall alſo have the king's pardon for all burglaries, robberies, and felonies (except murder and treaſon) by him committed before ſuch diſcovery made; which pardon ſhall be likewiſe a good bar to an appeal. 5 *An. c.* 31. *ſ.* 4. 40 l. and a pardon, for convicting two accomplices.

7. And the ſheriff, on producing the certificates, and receipts for the ſaid rewards, may deduct the ſame on his accounts; and if he have not money in his hands, he ſhall be repaid out of the treaſury, on certificate from the clerk of the pipe. 5 *An. c.* 31. *ſ.* 3. Sheriff how to be repaid.

Or inſtead of charging the ſame in his accounts, he may immediately apply to the commiſſioners of the treaſury, who ſhall forthwith repay the ſame without fee. 3 *G. c.* 15. *ſ.* 4.

Burning.

1. *Maliciouſly and voluntarily burning the houſe of another, by night or by day, is felony at the common law.* 1 Haw. 105. Houſeburning at the common law.

Maliciouſly and voluntarily] For if it be done by miſchance, or negligence, it is no felony. 3 *Inſt.* 67.

Yet if a man maliciouſly intending only to burn one perſon's houſe, happens thereby to burn the houſe of another, it is certain that he may be indicted as having maliciouſly burned the houſe of that other; for where a felonious deſign againſt one man miſſeth its aim, and takes effect upon another, it ſhall have the like conſtruction as if it had been levelled againſt him who ſuffers by it. 1 *Haw.* 106.

Burning] Neither a bare intention to burn a houſe, nor even an actual attempt to do it by putting fire to a part of a houſe, will amount to felony, if no part of it be burned; but if any part of the houſe be burnt, the offender is guilty of felony, notwithſtanding the fire afterwards be put out, or go out of it ſelf. 1 *Haw.* 106.

The houſe] Not only a manſion houſe, and the principal parts thereof, but alſo any other houſe, and the out-buildings, as barns, and ſtables adjoining thereto; and alſo barns full of corn, whether they be adjoining to any houſe or not, are ſo far ſecured by law, that the malicious burning of them is felony at common law. 1 *Haw.* 105.

Of another] A perſon ſeiſed in fee, or but poſſeſſed for years, of a houſe ſtanding by itſelf at a diſtance from all others, cannot commit felony in burning the ſame. Alſo it ſeems the much ſtronger opinion, that a man ſo ſeiſed or poſſeſſed of a houſe in a town, who burns his own with an intent to burn his neighbour's, but in the event burns his own only, is not guilty of felony: but however it is certainly an offence highly puniſhable, in regard of the malice thereof, and the great danger to the publick which attends

tends it; and the offender may be ſeverely fined, and impriſoned during the king's pleaſure, and ſet on the pillory, and bound to his good behaviour during life. 1 *Hawk.* 106.

By ſtatute: Burning a dwelling houſe or corn barn.

2. By the ſtatutes of 23 *H.* 8. *c.* 1. and 25 *H.* 8. *c.* 3. No perſon who ſhall be found guilty for wilful burning of any dwelling houſe, or barn wherein any corn ſhall be, nor perſons abetting, procuring, helping, maintaining, or counſelling the ſame, ſhall be admitted to the benefit of clergy.

There hath been much learned debate, how far theſe ſtatutes, which are repealed by 1 *Ed.* 6. *c.* 12. are revived by 5 & 6 *Ed.* 6. *c.* 10. But as the ſame is enacted in effect by other ſubſequent ſtatutes, it is now not very material.

By the 4 & 5 *P. & M. c.* 4. Every perſon who ſhall maliciouſly command, hire, or counſel any perſon, wilfully to burn any dwelling houſe, or any part thereof, or any barn then having corn or grain in the ſame, ſhall not have the benefit of his clergy.

But acceſſaries after ſhall have their clergy. 1 *H. H.* 573.

Burning a barn or ſtack of corn, in the northern counties.

3. Whoever ſhall wilfully and of malice burn, or cauſe to be burned, or aid, procure, or conſent to the burning of any barn, or ſtack of corn or grain, within any of the counties of *Cumberland, Northumberland, Weſtmorland,* and *Dureſme,* ſhall be guilty of felony without benefit of clergy. And juſtices of the peace in ſeſſions may hear and determine the ſame. 43 *El. c.* 13.

Burning in the night ſtacks of corn or hay, barns, houſes, kilns.

4. If any perſon ſhall in the night time maliciouſly, unlawfully, and willingly burn, or cauſe to be burned or deſtroyed, any ricks or ſtacks of corn, hay, or grain, barns, or other houſes or buildings, or kilns; he ſhall be guilty of felony, but without corruption of blood, or diſinheritance of heirs:

And the judges of aſſize, or three juſtices of the peace (1 *Q.*) may determine the ſame, ſo that the proſecution be within ſix months:

And the ſaid juſtices, on requeſt of the party injured, ſhall iſſue their warrant for apprehending all ſuch perſons as ſhall be ſuſpected thereof, and take their examination:

And ſhall cauſe all others who to them ſhall ſeem likely to make diſcovery, to appear before them, and give information on oath; yet ſo, as no perſon to be examined ſhall be proceeded againſt for any offence, concerning which he ſhall be examined as a witneſs, and ſhall upon his examination make a true diſcovery:

And if ſuch witneſs, being duly ſummoned, ſhall refuſe to appear, or to be examined, they may commit him to the common gaol, till he ſubmit to be examined upon oath:

And they ſhall iſſue warrants for ſummoning jurors:

And if any perſon, being found guilty (in order to avoid judgment of death, or execution thereupon) ſhall make his election to be tranſported, the court ſhall cauſe judgment to be entred that he be tranſported to ſome of the plantations (to be mentioned in the judgment) for ſeven years; and if he ſhall return before the expiration of the term, he ſhall ſuffer death as a felon, and as if no ſuch election to be tranſported had been made by him. 22 & 23 *C.* 2. *c.* 7.

5. By the 9 *G.* *c.* 22. commonly called the Black act, (which is inſerted more at length under the title *Black* act;) If any perſon ſhall ſet fire to any houſe, barn, or outhouſe, or to any hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood; [And by the 10 *G.* 2. *c.* 32. *ſ.* 6. If any perſon ſhall wilfully and maliciouſly ſet on fire any mine, pit, or delph of coal or cannel coal; which offence, by *ſ.* 4. of this act, is incorporated with the offences in the Black act] he ſhall be guilty of felony without benefit of clergy. Burning by the Black act.

And the hundred ſhall be chargeable, as in caſes of robbery, for the damages ſuſtained (not exceeding 200 *l.*)

And if any perſon ſhall apprehend, or cauſe to be convicted, any offender, and ſhall be killed, or wounded ſo as to loſe an eye or the uſe of a limb in endeavouring to apprehend him; on proof thereof made at the ſeſſions, and on certificate thereof from thence, he ſhall be intitled to the ſum of 50 *l.* to be paid by the ſheriff in 30 days, the ſame to be repaid to him out of the treaſury.

Which ſaid acts are temporary; and by the laſt continuance, are to be in force till *Sep.* 1. 1757 &c.

And by the 20 *G.* 2. *c.* 52. All offences of ſetting fire to any houſe, barn, or outhouſe, or to any hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood, are excepted out of the general pardon.

6. Such as be taken for houſeburning felonioufly done, are not bailable by juſtices of the peace. 3 *Ed.* 1. *c.* 15. 2 *Inſt.* 189. Houſeburning not bailable.

7. If any ſhip officer ſhall wilfully burn the ſhip to which he belongeth, or procure the ſame to be done, to the prejudice of the owner of the ſhip or goods, he ſhall be guilty of felony without benefit of clergy. 1 *An.* *ſt.* 2. *c.* 9. Burning a ſhip.

And by the articles of the navy, 22 *G.* 2. *c.* 33. Every perſon who ſhall unlawfully burn or ſet fire to any magazine, or ſtore of powder, or ſhip, boat, ketch, hoy, or veſſel, or tackle or furniture thereunto belonging, not appertaining to an enemy or rebel, ſhall be puniſhed with death, by the ſentence of a court martial. *Art.* 25.

8. If any perſon ſhall, by day or by night, in a riotous, open, tumultuous, or in a ſecret and clandeſtine manner, forcibly, or wrongfully and maliciouſly burn any wood, or ſprings of wood, or coppice wood, he ſhall be guilty of felony. 1 *G.* *ſt.* 2. *c.* 48. 6 *G.* *c.* 16. Burning wood growing.

And any two juſtices, or the juſtices in ſeſſions, may cauſe the offender to be apprehended, and hear, and determine, and adjudge the offence. 6 *G.* *c.* 16.

But if the offender is not known, then the perſon injured ſhall have ſatisfaction from the inhabitants of the pariſhes, towns, or places joining thereon, in the ſame manner as for dikes and hedges overthrown in the night, by the ſtatute of 13 *Ed.* 1. *c.* 46. (which enacts, that if it cannot be known by the verdict of aſſize or jury who did the fact, the towns near adjoining ſhall be diſtrained to levy the hedge at their own coſt, and to yield damages) unleſs the offender be by ſuch pariſh, town, or place, convicted in ſix months. 6 *G.* *c.* 16.

Burning ling, goſs, furze, or fern.

9. No perſon ſhall on any mountains, hills, heaths, moors, foreſts, chaſes, or other waſtes, burn between *Feb.* 2. and *June* 24. any grig, ling, heath, furze, goſs, or fern; on pain of being committed to the houſe of correction for any time not exceeding one month, nor leſs than ten days, there to be whipt and kept to hard labour. 4 & 5 *W.* *c.* 23. *ſ.* 11.

Burning goſs, furze, or fern in foreſts.

10. If any perſon ſhall ſet fire to, burn, or deſtroy any goſs, furze, or fern, in any foreſt or chaſe, without conſent of the owner or perſon chiefly intruſted with the cuſtody of ſuch foreſt, or chaſe, or of ſome part thereof, or ſhall be aiding therein, and being brought before a juſtice, ſhall be thereof convicted by confeſſion or oath of one witneſs, or on view of the juſtice, he ſhall forfeit not exceeding 5 *l.* nor leſs than 40 *s.* half to the informer, and half to the poor; if not forthwith paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be found, the juſtice ſhall commit him to the common gaol for any time not exceeding three months, nor leſs than one month. 28 *G.* 2. *c.* 19. *ſ.* 3.

Burning a laden cart, or fire wood.

11. If any perſon ſhall maliciouſly, willingly, and unlawfully, burn or cauſe to be burnt, any wain or cart laden with coals, or with any goods or merchandizes; or any heap of wood prepared, cut, or felled for making coals, billets, or talwood, he ſhall forfeit treble damages to the party grieved, to be recovered by action of treſpaſs; and alſo 10 *l.* as a fine to the king. 37 *H.* 8. *c.* 6. *ſ.* 4.

Puniſhment of a ſervant careleſly firing a houſe.

12. If any ſervant, thro' negligence or careleſſneſs, ſhall fire or cauſe to be fired any dwelling houſe, or out-houſe or houſes, and be thereof convicted on the oath of one witneſs before two juſtices, he ſhall forfeit 100 *l.* to the churchwardens of the pariſh where the fire ſhall happen, to be diſtributed by them to the ſufferers, in ſuch proportions as to them ſhall ſeem juſt; and if he do not pay the ſame immediately on demand of the churchwardens, the ſaid juſtices ſhall commit him to ſome workhouſe or houſe of correction for eighteen months, there to be kept to hard labour. 6 *An.* *c.* 31.

Threatning to burn a houſe.

13. By the commiſſion of the peace, any juſtice may cauſe to come before him, all thoſe who to any of the people concerning the firing of their houſes have uſed threats, to find ſufficient ſecurity for the peace or their good behaviour towards the king and his people; and if they ſhall refuſe to find ſuch ſecurity, may cauſe them to be ſafely kept in the king's priſons, until they ſhall find ſuch ſecurity.

Burying in woollen. See Woollen Manufacture.

Butchers.

1. NO perſon, uſing the trade of a butcher, ſhall ſell, offer, or expoſe to ſale, by himſelf or any other, any fat oxen, ſteers, runts, kine, heifers, calves, ſheep, or lambs alive; on pain of forfeiting double value, half to the king, and half to him that will ſue. 15 *C.* 2. *c.* 8. Not to ſell fat cattle alive.

2. If any butchers ſhall conſpire not to ſell their victuals but at certain prices; every ſuch perſon ſhall forfeit for the firſt offence 10*l.* to the king, and if not paid in ſix days, he ſhall ſuffer twenty days impriſonment, and ſhall only have bread and water for his ſuſtenance; for the ſecond offence 20*l.* in like manner, or the pillory; and for the third offence 40*l.* or pillory, and the loſs of an ear, and to be taken as a man infamous, and not to be credited in any matter of judgment. And the ſeſſions or leet may determine the ſame. 2 & 3 *Ed.* 6. *c.* 15. Conſpiring to raiſe the price of victuals.

3. No butcher ſhall ſlay any beaſt within any walled town, except *Carliſle* and *Berwick*; on pain of forfeiting for every ox 12*d.* every cow and other beaſt 8*d.* half to the king, and half to him that will ſue. 4 *H.* 7. *c.* 3. Not to kill in a walled town.

4. A butcher that ſelleth ſwine's fleſh meazled, or fleſh dead of the murrain, ſhall for the firſt time be grievouſly amerced, the ſecond time ſuffer judgment of the pillory, the third time be impriſoned and make fine, and the fourth time forſwear the town. Ordinance for bakers. *Hawk. Stat. V.* 1. *p.* 181. Selling unwholſome fleſh.

5. If any butcher ſhall kill or ſell any victual on the lord's day, he ſhall forfeit 6*s.* 8*d.* one third to the informer, and two thirds to the poor, on conviction before one juſtice, on his own view, or confeſſion, or oath of two witneſſes, to be levied by the conſtable or churchwarden. 3 *C.* *c.* 1. Not to kill or ſell on the lord's day.

6. No butcher ſhall water any hide, except in *June*, *July*, and *Auguſt*; on pain of 3*s.* 4*d.* for each offence. 1 *J.* *c.* 22. *ſ.* 2. One third to the king, one third to the informer, and one third to the town or lord of the liberty. *ſ.* 46. Not to water hides.

And the ſeſſions or leet may hear and determine the ſame. *ſ.* 50.

Or, any two juſtices, near the place, may (in three months after the offence committed) ſummon the party accuſed, and the witneſſes; and upon the party's appearance, or contempt in not appearing, on proof of notice given, may examine the witneſſes on oath, and give judgment, and iſſue warrants under their hands to levy the penalty by diſtreſs; and, if not redeemed in ſix days, the ſame to be ſold. They may alſo mitigate the penalties, ſo as they reduce them not to leſs than a fourth part, over and above the coſts and charges. And any perſon aggrieved may appeal to the next ſeſſions, who may finally determine the ſame; and, in caſe of conviction, iſſue warrants for levying the penalties. 9 *An.* *c.* 11. *ſ.* 36.

7. No butcher ſhall put to ſale any hide putrified or rotten; on pain of 3*s.* 4*d.* for each offence, in like manner. 1 *J.* *c.* 22. *ſ.* 2. Selling rotten hides.

8. No

Exercising the trade of a tanner.

8. No butcher shall be a tanner or currier; on pain of 6 *s.* 8 *d.* a day, to be recovered and levied in like manner. 1 *J.* *c.* 22. *s.* 2, 25.

Gashing hides.

9. If any raw hide shall wilfully or negligently be gashed, in the flaying thereof; or being gashed, be offered to sale by any butcher or other; the offender shall forfeit 2 *s.* 6 *d.* for such hide, and 1 *s.* for a calf skin; half to the poor, and half to the informer: To be levied by two justices in like manner. 9 *An.* *c.* 11. *s.* 11.

Butter and Cheese.

I. Concerning the packing, weight, and goodness of butter.

II Concerning the licence of a person to buy and sell butter.

III. Concerning ingrossing and regrating of butter and cheese.

IV. Concerning the shipping of butter and cheese for London.

V. Exporting of butter and cheese.

VI. Importing of butter and cheese.

I. Concerning the packing, weight, and goodness of butter.

Weight of the cask to be marked.

1. EVERY farmer and other person packing up butter for sale, shall set upon every firkin and cask, when the same is fully seasoned in water, a continuing visible mark of the just weight of the empty cask; on pain of forfeiting for every offence the sum of ten shillings for every hundred weight of butter otherwise packed, and so proportionably for a greater or lesser quantity; half to the churchwardens and overseers for the use of the poor, and half with double costs to him who shall sue for the same in sessions, by action of debt, indictment, information, or presentment. 13 & 14 *C.* 2. *c.* 26. *s.* 5, 6.

Weight of a pot to be marked.

2. Also every potter shall set upon every pot which he shall sell for packing up butter, the just weight of the pot when it is burnt, together with the first letter of his christian name, and his surname at length; on pain of 1 *s.* And no person shall expose to sale any butter packed up in any pot not so marked, on pain of 2 *s.* for every such pot. To be recovered and applied in like manner. 13 & 14 *C.* 2. *c.* 26. *s.* 6.

3. Every

3. Every kilderkin of butter shall contain 112 pounds, and every firkin 56 pounds neat, or above; every pound containing 16 ounces, besides the tare of the cask, of good and merchantable butter; and every pot of butter shall contain 14 pounds neat, or above, besides the weight of the pot; Weight and goodness.

And no butter which is old or corrupt shall be mixed or packed up with any butter which is new and sound;

Nor any whey butter shall be packed or mixed with any butter made of cream;

And every cask or pot of butter shall be of one sort and goodness;

And no butter shall be salted with any great salt, but shall be salted and saved with small salt; nor more salt shall be intermixed with it than shall be needful for its preservation:

On pain that every owner, farmer, or packer of butter, not putting up in each kilderkin, firkin, and pot, to be sold or exposed to sale, such quantities as aforesaid, or offending in false packing as aforesaid, for every offence shall forfeit the value of all the butter so false packed; and for every offence where any kilderkin, firkin, or pot shall be found to contain a lesser quantity of butter than as above, six times the value of every pound of butter that shall be wanting in such cask or pot; to be recovered and applied as aforesaid. 13 & 14 *C.* 2. *c.* 26. *s.* 2.

4. And when the farmer or other person hath filled the cask with butter, he shall, besides the former mark of the weight of the cask, set also on the cask the first letter of his christian name, and his surname at length with an iron brand; on pain of forfeiting for every offence the sum of 10*s.* for every hundred weight of butter otherwise packed, and for more or less proportionably; to be recovered and applied in like manner. 13 & 14 *C.* 2. *c.* 26. *s.* 5. Owner to set his name on the cask.

5. And every cheesemonger and other who shall sell any kilderkin, firkin, pot, or other cask of butter, shall deliver therein the full quantity and due quality; or shall be liable to make satisfaction, according to the price thereof. 13 & 13 *C.* 2. *c.* 26. *s.* 3. Cheesemonger to deliver due quantity and quality.

6. And no cheesemonger or other person shall repack for sale, any butter, in any kilderkin, firkin, or other cask, or pot, on pain of forfeiting double value thereof; to be recovered and applied in like manner. 13 & 14 *C.* 2. *c.* 26. *s.* 4. Cheesemonger shall not repack butter.

7. The prosecution for the offences above, shall be commenced in four months after the sale of the butter. 13 & 14 *C.* 2. *c.* 26. *s.* 7. In what time the prosecution shall be.

8. But provided nevertheless, that no seller of butter shall be charged with any of the said penalties, after the buyer hath bought the butter and approved it. 4 *W.* *c.* 7. *s.* 2. Prosecution not to be, if the buyer hath approved it.

9. And for preventing any fraud in the seller, after the factor or buyer hath bought the butter, the said factor or buyer shall set his seal, or mark, or name upon it, or upon the cask; and if it shall be afterwards exchanged or opened, and the cask changed, or any bad butter mixed or packed up with good butter, or any other fraud be committed by the seller; and he be convicted thereof, before one justice, by oath of one witness, or confession, he Fraud after sale, by the seller.

he shall forfeit 20 *s.* for every firkin and offence, to be levied by the constable, by distress, and to be distributed by the justice, half to the churchwardens and overseers for the use of the poor, and half to the informer. 4 *W.* *c.* 7. *s.* 2.

But any person aggrieved may appeal to the sessions, giving 20 *l.* bond to the party, to pay costs (in a month after) if he is not relieved on his appeal. *id.* *s.* 10.

II. Concerning the licence of a person to buy and sell butter.

Licence.

No badger, lader, kidder, carrier, buyer or transporter of butter and cheese shall be licensed (A) thereunto, unless he be or have been a married man, and be an housholder, and of the age of 30 years or upwards; and unless it be in open sessions of the county, where he hath dwelt for three years last past. 5 *El.* *c.* 12. *s.* 4.

And the licence to bear date of the day and place of the sessions; and to be signed and sealed by three justices there (1 Q.) *s.* 5.

And the court may take recognizance (B) that he shall not forestall nor ingross, nor do any thing contrary to the statute of 5 & 6 *Ed.* 6. *c.* 14. against regrating, ingrossing, and forestalling. *s.* 6.

The licence and recognizance to be written by the clerk of the peace or his deputy, and by no other person; for which he shall have, for the licence 12 *d.* for the recognizance 8 *d.* and for registring them 4 *d.* For which fee, he shall also enter the names and dwellings of the persons licensed, and a brief declaration of the licence, with the day, time, and place when granted, in a register book, which he shall have at every sessions. *s.* 6.

And the licence to continue but for a year, unless renewed. *s.* 4.

And every person taking any licence contrary hereto, shall forfeit to the king 5 *l.* and the licence to be void: The same to be recovered in sessions, by inquisition, presentment, bill, or information, and by examination of two witnesses. *s.* 5, 7.

But this shall not extend to prejudice the liberty of a city or town corporate, but that they may licence purveyors, for the provision thereof. *s.* 9.

Neither shall it extend to the inhabitants of the counties of *Westmorland*, *Cumberland*, *Lancaster*, *Chester*, and *York*; but that they may do as heretofore they have lawfully used to do. *s.* 10. But by a general clause in the 13 *El.* *c.* 25. *s.* 20. these counties seem now to be included; by which it is enacted, that no person whatsoever shall be admitted or licensed to be a buyer, badger, kidder, or carrier of butter and cheese, and such like kind of victual, otherwise than by 5 *El.* *c.* 12.

III. Concerning ingroſſing and regrating of butter and cheeſe.

There is nothing relating to the *foreſtalling* of butter and cheeſe, different from the foreſtalling of other goods; which may be ſeen under the general title of foreſtalling. But as to ingroſſing and regrating the ſame, it hath been enacted as followeth:

1. By the 3 & 4 *Ed.* 6. *c.* 21. No perſon ſhall buy to ſell again, any butter or cheeſe, unleſs he ſell the ſame again by retail in open ſhop, fair, or market (or victuallers in their houſes), and not in groſs; on pain of double value, half to the king, and half to him that will ſue. Not to be ſold again, but by retail.

And the word *retail* ſhall be taken only where a weight of cheeſe (*viz.* 225 pounds, in ſome places 256, in others 336 pounds, *Dalt. c.* 112.) or a barrel of butter, or leſs quantity, and not above, ſhall be ſold at any time to any perſon or perſons.

2. And by the 5 & 6 *Ed.* 6. *c.* 14. Whoſoever ſhall ingroſs or get into his hands any butter or cheeſe, to ſell the ſame again, ſhall be deemed an ingroſſer. *ſ.* 3. Ingroſſing.

3. But the buying of any butter or cheeſe, by any licenſed badger, lader, kidder, or carrier, who ſhall ſell or deliver in open fair or market, ſhall not be deemed regrating. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 7. Regrating.

4. And nothing in theſe two acts ſhall extend to cheeſemongers and tallowchandlers in *London* and *Weſtminſter*, for what they ſhall ſell for victualling of ſhips, or for what they ſhall ſell in their ſhops or market, not exceeding four weighs of cheeſe, and four barrels of butter. 21 *J. c.* 22. Cheeſemongers in London.

Provided, that if the juſtices of the peace in any county, in their quarter ſeſſions, ſhall declare that the ſaid traders in butter and cheeſe ſhall forbear to buy any in ſuch county for any time, and they do buy within that time, and ſell the ſame by retail, they ſhall not have the benefit of this act. *id.*

IV. Concerning the ſhipping of butter and cheeſe for London.

1. Every warehouſekeeper, weigher, ſearcher, or ſhipper of butter and cheeſe, ſhall receive all butter and cheeſe that ſhall be brought to him, for the *London* cheeſemongers, and ſhip the ſame without undue preference; and ſhall have for his pains 2*s.* 6*d.* for every load: and if he ſhall make default, he ſhall, on conviction before one juſtice, on oath of one witneſs, or confeſſion, forfeit for every firkin of butter 10*s.* and for every weigh of cheeſe 5*s.* half to the churchwardens and overſeers for the uſe of the poor, and half to the informer, to be levied by the conſtable, by diſtreſs and ſale. 4 *W. c.* 7. *ſ.* 4. No undue preference.

2. And he ſhall keep a book of entry of receiving and ſhipping the goods; on pain of 2*s.* 6*d.* for every firkin of butter, and weigh of cheeſe, to be levied and applied in like manner; and for want of diſtreſs, to be committed till paid. 4 *W. c.* 7. *ſ.* 5. Book of entry.

Master of a ship refusing to take in.

3. A master of a ship refusing to take in butter or cheese, before he is full laden (except it be a cheesemonger's own ship sent for his own goods), shall forfeit for every firkin of butter refused 5 *s.* and for every weigh of cheese 2 *s.* 6 *d.* to be levied and applied in like manner. 4 *W.* *c.* 7. *s.* 6.

Appeal.

4. Person aggrieved by the determination of the justice, may appeal to the next sessions, giving 20 *l.* bond, with one or more sureties, to the party, to pay costs (within a month after) if he is not relieved on his appeal. 4 *W.* *c.* 7. *s.* 10.

Exception.

5. But this act shall not extend to any warehouse in *Cheshire* or *Lancashire*. 4 *W.* *c.* 7. *s.* 9.

V. Exporting of butter and cheese.

Exportation.

Butter and cheese may be exported custom free. 3 *W.* *c.* 8.

VI. Importing of butter and cheese.

Importation.

No butter or cheese shall be imported from *Ireland*. 32 *C.* 2. *c.* 2.

Note; There are special directions in the act of 8 *G.* *c.* 27. concerning the selling of butter in the city of *York*, and in the act of the 17 *G.* 2. *c.* 8. concerning the same in *New Malton*; which are not general enough to be here inserted.

A. Licence of a badger of butter and cheese; on the 5 *El.* *c.* 12.

Westmorland. AT *the general quarter sessions of the peace held at* ——— *in and for the said county, this* ——— *day of* ——— *in the* ——— *year of* ——— *We* A. B. C. D. *and* E. F. *esquires, justices of the peace for the said county (one whereof is of the* Quorum) *have licensed, and by these presents do license and admit* B. B. *of* ——— *in the said county, being upwards of thirty years of age, and being also a married man* [or *a widower*], *and an housholder, and having been an inhabitant in the said county for three years last past, to be a common badger, lader, kidder, carrier, buyer and transporter of butter and cheese, for and during the space of one year from the date hereof; so as he do use and follow the said business, according to the true intent and meaning of the statutes in that case made and provided, against regrators, forestallers, and ingrossers, and not otherwise. Given under our hands and seals* &c.

B. *Condition of the recognizance*; on the 5 *El.* *c.* 12. *s.* 6.

——— *That he shall not forestall, or ingross, or do any thing contrary to the true meaning of the statutes made against regrators, forestallers, and ingrossers, or any thing therein contained.*

Buttons.

1. NO perſon ſhall ſell or offer to ſale, or import, any foreign bone-lace, cut-work, imbroidery, fringe, band ſtrings, buttons, or needle work, made of thread and ſilk, or either of them, or any foreign buttons whatſoever; on pain that he who ſhall offer them to ſale ſhall forfeit the ſame and 50*l.* and the importer ſhall forfeit the ſame and 100*l.* half to the king, and half to him that ſhall ſue. 13 & 14 *C.* 2. *c.* 13. *ſ.* 2. 4 *W.* *c.* 10. *ſ.* 2. Foreign buttons.

And on complaint and information given to a juſtice of the peace, at times reaſonable, he ſhall iſſue his warrant to the conſtable, to enter and ſearch for ſuch manufactures in the ſhops being open, or warehouſes, and dwelling houſes of ſuch perſons as ſhall be ſuſpected, and to ſeize the ſame. 13 & 14 *C.* 2. *c.* 13. *ſ.* 3. 4 *W.* *c.* 10. *ſ.* 2.

And *Engliſh* bone-lace, needlework, point, or cut-work, may be exported cuſtom free. 11 & 12 *W.* *c.* 3. *ſ.* 15.

2. By the 10 *W.* *c.* 2. No perſon ſhall make, ſell, or ſet on, any buttons made of cloth, or made of wood only; on pain of 40*s.* a dozen, half to the king, and half to him that ſhall ſue in any court of record. Cloth buttons.

And by the 8 *An.* *c.* 6. No taylor or other perſon ſhall make, ſell, ſet on, uſe, or bind on any cloaths, any buttons or button holes, made of or uſed, or bound with ſerge, drugget, frize, camlet, or other ſtuffs of which cloaths are uſually made; on pain of 5*l.* a dozen, half to the king, and half to him that ſhall ſue in any court of record; or on complaint to two juſtices, they may ſummon witneſſes, and levy the penalty, and return the overplus if any be; and if any perſon is aggrieved, he may appeal to the next ſeſſions.

But by this act no power is given to make diſtreſs. The next that occurs, is the ſtatute of 4 *G.* *c.* 7. which in the ſtatutes at large is a looſe, injudicious, and ungrammatical act, and by its garb may well enough ſeem to have been drawn up by the taylors or button makers; whereby it is enacted as follows:

No taylor or other perſon ſhall make, ſell, ſet on, or bind on any cloaths, any buttons or button holes made of, or uſed, or bound with cloth, ſerge, drugget, frize, camlet, or any ſtuffs that cloaths are uſually made of (velvet excepted); on pain of 40*s.* a dozen: To be determined by one juſtice where the offence ſhall be diſcovered, or the offender ſhall inhabit, on oath of one witneſs, in three months after the offence committed; and to be diſtributed (charges of conviction firſt deducted) half to the informer, and half to the poor of the pariſh or place where the offence ſhall be diſcovered: if not paid (being lawfully demanded) in 14 days after conviction, the juſtice ſhall iſſue his warrant to the conſtable where the offender dwells, or can be found, to levy it by diſtreſs and ſale; and where no ſufficient diſtreſs can be found, he ſhall be committed to the common gaol of the county or place where he

ſhall

ſhall be found, to be kept to hard labour for three kalendar months. Perſons aggrieved may appeal to the ſeſſions, giving ſufficient notice; and the ſeſſions may allow coſts to the party aggrieved.

And taylors cauſing their apprentices or ſervants to make ſuch cloaths, ſhall themſelves be ſubject to the penalties.

And all ſuch cloaths, made with ſuch buttons and button holes, *expoſed to ſale*, ſhall be forfeited and ſeized, and recovered and diſpoſed of as the other penalties.

And by the ſtatute of the 7 G. *ſt.* 1. *c.* 12. No perſon ſhall *uſe or wear* on any cloaths (velvet excepted) any ſuch buttons or button holes; on pain of 40*s.* a dozen, on conviction by confeſſion or oath of one witneſs; and any juſtice of the peace, where the offence ſhall be committed, or the offender ſhall inhabit, ſhall on complaint or information on oath, of any credible perſon, in one month after the offence, ſummon the party, and on his appearance or contempt, examine the matter, and on due proof by confeſſion or oath of one witneſs convict the offender, and cauſe the forfeiture by his warrant to be levied by diſtreſs and ſale: the ſaid penalties to be half to him on whoſe oath the party ſhall be convicted, and half to the poor of the pariſh where the offence ſhall be committed. And perſons aggrieved may appeal to the next quarter ſeſſions, giving 8 days notice.

To him on whoſe oath the party ſhall be convicted] This is almoſt the only inſtance where a ſhare of the penalty is given in expreſs words, in a popular action, to the party on whoſe oath any perſon is convicted; and the contrary doctrine ſeems generally to prevail in moſt caſes, that the defendant ſhall not be condemned upon the ſole teſtimony of the plaintiff ſwearing for his own intereſt: And it is certainly againſt the common law, that ſuch a perſon ſhould be a witneſs at all; and therefore his right to give evidence in his own cauſe, and the power to convict the defendant upon that ſole evidence, muſt depend on the expreſs words of ſome ſtatute.

Buying of titles.

I. By the common law.
II. By ſtatute.

I. By the common law.

IT ſeemeth to be an high offence at common law, to buy or ſell any doubtful title to lands known to be diſputed, to the intent that the buyer may carry on the ſuit, which the ſeller doth not think it worth his while to do, and on that conſideration ſells his pretenſions at an under rate; and it ſeemeth not to be material, whether the title ſo ſold be a good or bad one, or whether the ſeller were in poſſeſſion or not, unleſs his poſſeſſion were lawful and uncontеſted; for all practices of this kind are by all means

means to be diſcountenanced, as manifeſtly tending to oppreſſion, by giving opportunities to great men to purchaſe the diſputed titles of others, to the great grievance of the adverſe parties, who may often be unable or diſcouraged to defend their titles againſt ſuch powerful perſons, which perhaps they might ſafely enough maintain againſt their proper adverſary. 1 *Haw.* 261.

II. By ſtatute.

1. By the ſtatute of 13 *Ed.* 1. *c.* 49. *No perſon of the king's houſe ſhall buy any title whilſt the thing is in diſpute; on pain of both the buyer and ſeller being puniſhed at the king's pleaſure.*

2. And by 32 *H.* 8. *c.* 9. *None ſhall buy any pretenced right in any land, unleſs the ſeller hath taken the profit thereof one year before; on pain that the ſeller ſhall forfeit the land, and the buyer the value, half to the king, and half to him that ſhall ſue within one year.* ſ. 2, 6.

Pretenced title] But he who is in lawful poſſeſſion may purchaſe the pretended title of any others. 32 *H.* 8. *c.* 9. *ſ.* 4.

One year before] But no conveyance made by one who hath the unconteſted poſſeſſion, and undiſputed abſolute propriety of lands, is any way within the meaning of this ſtatute. 1 *Haw.* 265.

3. *And the offence of buying of titles may be laid in any county, at the pleaſure of the informer.* 31 El. c. 5. ſ. 4.

Callico. See Excise.

Cambrick.

1. CAMBRICKS (ſo called from being made at *Cambray* in *Flanders*) and *French* lawns may be imported, on the importer's making oath, that they are for exportation only, and that they are really the property of the importer or ſome other ſubject, and that no foreigner hath any intereſt therein, and alſo giving bond for payment of 5 *l.* for each piece which ſhall not be exported within three years after entry. 18 *G.* 2. *c.* 36. *ſ.* 6. Importation.

2. But no perſon ſhall *wear* any cambrick or *French* lawn; on pain of 5 *l.* to the informer, on conviction by oath of one witneſs before one juſtice, who ſhall on information on oath in ſix days after the offence committed, ſummon the party, and on his appearance or contempt proceed to examine the matter, and on due proof thereof made, either by confeſſion, or oath of one witneſs, hear and determine the ſame, and cauſe the penalty to be levied by diſtreſs. The party aggrieved may appeal to the next ſeſſions, giving ſix days notice. 18 *G.* 2. *c.* 36. *ſ.* 1. Wearing it.

Selling it.

3. And if any perſon ſhall *ſell* or expoſe to ſale any cambrick or *french* lawns, made or not made up, (except for exportation,) he ſhall forfeit 5 *l.* in like manner. 18 *G.* 2. *c.* 36. *ſ.* 2.

Wearer diſcovering the ſeller.

4. But if the wearer ſhall, on oath before a juſtice, diſcover the ſeller (if ſuch ſale was after *Jun.* 24. 1748.) he ſhall be diſcharged, and the ſeller only ſhall be liable. 18 *G.* 2. *c.* 36. *ſ.* 3. 21 *G.* 2. *c.* 26. *ſ.* 2.

And where ſuch wearer ſhall be excuſed by diſcovering the vender, the penalty on the vender ſhall go to the perſon who informed againſt the wearer. 21 *G.* 2. *c.* 26. *ſ.* 3.

Milliner making up.

5. And any milliner or other perſon who ſhall for hire make up any cambrick or *french* lawn, for any wearing apparel, ſhall be liable to the penalties inflicted on the vender. 21 *G.* 2. *c.* 26. *ſ.* 5.

Huſband liable.

6. And where an offender is a feme covert, living with her huſband, the penalty ſhall be levied on the goods of the huſband. 21 *G.* 2. *c.* 26. *ſ.* 4.

Candles. See Exciſe.
Caſtas. See Proceſs.
Cards. See Stamps.

Carriers.

Rates for carriage.

1. BY the 3 *W.* *c.* 12. The juſtices in *Eaſter* ſeſſions yearly, ſhall rate the prices of all land carriage of goods to be brought *into* any place within their juriſdiction, by any common waggoner or carrier; and ſhall certify the rates ſo made to the mayors and other chief officers of the ſeveral market towns within their juriſdiction, to be hung up in ſome publick place to which all perſons may reſort: And no ſuch common waggoner or carrier ſhall take for carriage above the rates ſo ſet, on pain of 5 *l.* by diſtreſs, by warrant of two juſtices where ſuch waggoner or carrier ſhall reſide, to the uſe of the party grieved. *ſ.* 24.

And by 21 *G.* 2. *c.* 18. If any common waggoner or carrier ſhall demand and take any greater price for bringing goods *to London*, or to any place within the bills of mortality than is allowed and ſettled by the juſtices for the place from whence the ſame are brought for the carrying of goods *from London* to the ſaid place; he ſhall forfeit 5 *l.* to the party grieved, to be recovered as by the ſaid act of the 3 *W.* or by diſtreſs and ſale of his goods, by warrant from two juſtices of *Middleſex*, *Surrey*, *London*, or *Weſtminſter*. ſ. 3.

And the clerk of the peace in the country ſhall, immediately after *Eaſter* ſeſſions yearly, certify to the lord mayor of *London*, [illegible] to the reſpective clerks of the peace for *Middleſex*, *Surrey*, and *Weſtminſter*, the rates made for the carriage of goods in their

reſpective counties and places; which certificate, or an atteſted copy thereof, ſigned by the officer to whom the ſame ſhall be tranſmitted, ſhall be ſufficient evidence of the prices ſo ſet. ſ. 3.

And every common waggoner or carrier ſhall have his chriſtian and ſurname and place of abode, in large or capital letters, placed upon ſome conſpicuous part of his carriage, before he ſhall drive the ſame; on pain of 20*s.* to be levied and recovered as aforeſaid. ſ. 4.

2. No carrier with any horſe or horſes, nor waggon-man, carman, or wain-man, with their reſpective carriages, ſhall by themſelves, or any other, travel on the lord's day; on pain of 20*s.* on conviction in ſix months, before one juſtice (or mayor), on view, or confeſſion, or oath of two witneſſes, to be levied by the conſtable or churchwardens by diſtreſs; to the uſe of the poor, except that the juſtice may reward the informer with any ſum not exceeding a third part. 3 C. *c.* 1. Carrier travelling on ſundays.

3. It hath been holden, that a carrier imbezilling goods which he has received to carry to a certain place, is not guilty of felony, becauſe there was not a felonious *taking*; but is liable only to a civil action. 1 *Haw.* 89, 90. Carrier imbezilling goods.

4. But it hath been reſolved, that if a carrier open a pack, and take out part of the goods, with intent to ſteal it, he may be guilty of felony; in which caſe it may be ſaid, not only that ſuch poſſeſſion of a part diſtinct from the whole, was gained by wrong, and not delivered by the owner; but alſo that it was obtained baſely, fraudulently, and clandeſtinely, in hopes to prevent its being diſcovered at all, or fixed upon any one when diſcovered. 1 *Haw.* 90. Carrier opening a pack.

5. Alſo it ſeems clear, that if a carrier, after he has brought the goods to the place appointed, take them away again ſecretly, with intent to ſteal them, he is guilty of felony; becauſe the poſſeſſion, which he received from the owner, being determined, his ſecond taking is in all reſpects the ſame, as if he were a mere ſtranger. 1 *Haw.* 90. Carrier ſtealing goods after brought to the place.

6. Alſo it hath been reſolved, that if goods be delivered to a carrier, to be carried to a certain place, and he carries them to another place, and diſpoſeth of them to his own uſe, that this is felony; becauſe this declareth that his intention originally was not to take the goods, upon the agreement and contract of the party, but only with a deſign of ſtealing them. *Kelynge* 82. Carrying to another place.

7. Where goods are delivered to a carrier, and he is robbed of them, he ſhall be charged, and anſwer for them, by reaſon of the hire: And this was at the common law, before the hundred was anſwerable over to him; becauſe ſuch robbery might be, by conſent and combination, carried on in ſuch a manner, that no proof could be had of it. 1 *Salk.* 143. Carrier robbed.

8. *H.* 5 *G.* *Titchburne* and *White.* By *King* Ch. J. If a box is delivered generally to a carrier, and he accepts it; he is anſwerable, though the party did not tell him there is money in it. But if the carrier aſks, and the other ſays no, or if he accepts it conditionally, provided there is no money in it, in either of theſe caſes the carrier is not liable. How far it is neceſſary that the carrier ſhould know what the goods are.

Goods delivered to the carrier's ſervant.

9. A delivery to the carrier's ſervant, is a delivery to the carrier; and if goods are delivered to a carrier's porter, and loſt, an action will lie againſt the carrier. *Read. Car.*

Carrier may indict for goods ſtolen, as his own property.

10. Where goods are ſtolen from a carrier, he may prefer an indictment againſt the felon, as for his own goods; for tho' he has not the abſolute property, yet he has ſuch a poſſeſſory property, that he may maintain an action of treſpaſs againſt any one who takes them from him, and ſo may indict a thief for taking them: and the indictment were good alſo, if it had been brought by the real owner. *Kelynge* 39.

Perſon ſtealing his own goods from the carrier.

11. And there is a ſpecial caſe, wherein it is ſaid, that a man may commit larceny by ſtealing his own goods delivered to the carrier, with intent to make him anſwer for them; for the carrier had a ſpecial kind of property in the goods, in reſpect whereof, if a ſtranger had ſtolen them, he might have been indicted generally as having ſtolen the ſaid carrier's goods, and the injury is altogether as great, and the fraud as baſe, where they are taken away by the very owner. 1 *Haw.* 94.

Caſual death. See Deodand.

Cattle.

So much of this title as concerns butchers in particular, may be ſeen under title Butchers.

I. What number of cattle a man ſhall keep.
II. Concerning the bringing of cattle into England.
III. Buying and ſelling of cattle; and therein of drovers.
IV. Stealing, killing, or maiming of cattle.

I. What number of cattle a man ſhall keep.

What proportion ſhall be obſerved

1. FOR the encouragement of the breeding of cattle, every perſon who ſhall keep above ſixſcore ſheep, above what is for his houſhould, ſhall for every threeſcore ſheep keep one milch cow, and bring up yearly for every ſixſcore ſheep one calf; on pain of forfeiting 20*s.* a month.

And every perſon who ſhall keep above 20 oxen, runts, ſhrubs, ſteers, heifers, or kine, ſhall for every ten of them keep one milch cow yearly, and rear one calf for the ſpace of one year (unleſs it die

die in the mean time) for every ſuch two milch cows; on pain of forfeiting 20*s.* a month:

Theſe penalties to go, half to the king, and half to him who ſhall ſue in the ſeſſions or other court of record. 2 & 3 *P. & M.* *c.* 3. 7 *J.* *c.* 8.

None to have above 2000 ſheep.

2. And for the encouragement of tillage, and to prevent the ingroſſing of farms into a few hands, no man ſhall keep above 2000 ſheep, at ſixſcore to the hundred, over and above what is neceſſary for his houſhold; except it be upon his own proper eſtate; on pain of 3*s.* 4*d.* for every ſheep above that number, half to the king, and half to him that ſhall ſue for the ſame in ſeſſions: —— lambs not to be accounted ſheep, till the ſecond midſummer after they are lambed. 25 *H.* 8. *c.* 13.

II. Concerning the bringing of cattle into England.

Cattle of the iſle of Man.

1. Not above 600 cattle ſhall be imported from the iſle of *Man* yearly; and to be landed at *Cheſter* and the members thereof only. 18 *C.* 2. *c.* 2.

Scotch cattle.

2. By the ſixth article of the union, no *Scotch* cattle, carried in *England*, ſhall be liable to any other duties, than thoſe to which the cattle of *England* are liable. 5 *An.* *c.* 8.

Iriſh cattle.

3. The importation of cattle from *Ireland*, and other places beyond ſea, ſhall be a common nuſance. 18 *C.* 2. *c.* 2.

And if any ſhall be imported, any perſon may ſeize them, and keep them 48 hours; and if in that time, it be made appear to a juſtice, on the oath of two witneſſes, that they were not imported from *Ireland*, nor from any other place beyond ſea, then they ſhall be delivered on warrant of ſuch juſtice; but in default of ſuch proof and warrant, then to be forfeited. 18 *C.* 2. *c.* 2. 32 *C.* 2. *c.* 2.

And the ſeizor, within ſix days after the conviction and forfeiture, ſhall cauſe them to killed; the hides and tallow he ſhall have himſelf, the reſt ſhall go to the poor, to be diſtributed by the churchwardens and overſeers. 32 *C.* 2. *c.* 2.

And the ſeizors, churchwardens, or overſeers neglecting their duty herein, ſhall forfeit 40*s.* for every one of the great cattle, and 10*s.* for ſheep and ſwine; half to the poor, and half to the informer, by warrant of one juſtice, by diſtreſs; for want of diſtreſs, commitment for three months. 32 *C.* 2. *c.* 2. *ſ.* 6.

And the ſhips bringing the ſame ſhall be forfeited, and any perſon may ſeize and ſell them, half for the poor, and half for himſelf. 20 *C.* 2 *c.* 7.

And a juſtice of the peace may by warrant apprehend the ſeamen, and all others concerned, and commit them to gaol for three months. 20 *C.* 2. *c.* 7.

And if no ſeizure is made in the diſtrict where they are firſt imported, ſuch place ſhall forfeit 100*l.* to the uſe of the houſe of correction. 20 *C.* 2. *c.* 7.

And if the cattle come by colluſion of officers, or otherwiſe, into any other than the firſt diſtrict, they may be ſeized there in like manner. 20 *C.* 2. *c.* 7.

And perſons confederating to elude this act, ſhall incur a *præmunire*. 20 *C.* 2. *c.* 7.

And alſo, cattle once ſeized, and afterwards found in another diſtrict, may be reſeized there. 32 *C.* 2. *c.* 2. *ſ.* 10.

And *Engliſh* cattle intermixed in a drove with *Iriſh* cattle, may be ſeized as *Iriſh* cattle. 32 *C.* 2. *c.* 2. *ſ.* 11.

III. Buying and ſelling of cattle; and therein of drovers.

None ſhall buy and ſell in the ſame market.

1. No perſon ſhall buy any ox, ſteer, ront, cow, heifer, or calf, and ſell the ſame again alive, in the ſame market or fair; on pain of forfeiting double value, half to the king, and half to him who ſhall ſue. 3 & 4 *Ed.* 6. *c.* 19. 3 *C.* *c.* 4. *ſ.* 7, 8.

Not to ſell again in leſs than five weeks.

2. And if any perſon ſhall buy any ox, ront, ſteer, cow, heifer, calf, ſheep, lamb, goat, or kid living, and ſell the ſame again alive, unleſs he keep and feed the ſame for five weeks; he ſhall forfeit double value, half to the king, and half to him that ſhall ſue in any court of record: And alſo the juſtices in ſeſſions may determine the ſame, by inquiſition, preſentment, bill, or information, and by examination of two witneſſes, and make proceſs thereupon as upon indictment; and make eſtreats for the king's moiety, and award execution of the other moiety for the complainant, by *fieri facias*, or *capias*, as the courts at *Weſtminſter* may do. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 9, 10.

Except drovers.

3. But nevertheleſs it ſhall be lawful to any perſon known for a common drover (being licenſed as is hereafter directed) to buy cattle in any ſuch counties, where drovers have been wont in times paſt accuſtomably to buy cattle, at their free liberty and pleaſure, and to ſell the ſame at reaſonable prices, in common fairs and markets, diſtant from the place where he bought the ſame 40 miles at the leaſt (ſo that they be not bought by foreſtalling). 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 16, 17.

Drover's licence.

4. And no drover of cattle ſhall be licenſed (A), but in the ſeſſions of the county where he dwells, and hath dwelt for 3 years laſt paſt; nor unleſs he be or have been a married man: and be a houſholder, and not a houſhold ſervant or retainer to any perſon; and of the age of 30 years at the leaſt. 5 *El.* *c.* 12. *ſ.* 4.

Which licence ſhall bear date of the day and place where the ſeſſions ſhall be holden; and ſhall be ſigned and ſealed by three juſtices preſent (1 Q.); on pain that every perſon who ſhall take any licence otherwiſe, ſhall forfeit 5 *l.* and the licence to be void. *ſ.* 5.

And the ſeſſions may take bond and ſurety by recognizance (B), that they ſhall not foreſtall or ingroſs, or do any thing contrary to this act, and the above act of 5 & 6 *Ed.* 6. *c.* 14. *id. ſ.* 6.

The licence to be written by the clerk of the peace, for which he ſhall have 12 *d.* and for the recognizance 8 *d.* and for regiſtring the ſame 4 *d.* for which ſaid fee, he ſhall keep a regiſter book of the names and dwelling places of the perſons licenſed, with an entry

entry of the day, time, and place where the licence was granted; which book he ſhall have at the ſeſſions. *id. ſ.* 6.

And ſuch licence ſhall be only of force for one year. *id. ſ.* 4.

And the juſtices in ſeſſions may hear and determine offences againſt this act, in the ſame manner as againſt the 5 & 6 *Ed.* 6. *c.* 14. in the laſt ſection. *id. ſ.* 8.

But this act ſhall not extend to the inhabitants of the counties of *Weſtmorland*, *Cumberland*, *Lancaſter*, *Cheſter*, and *York*; but that they may do as heretofore they have lawfully uſed to do. *id. ſ.* 10.

But by a general clauſe in the 13 *El. c.* 25. *ſ.* 20. theſe counties ſeem alſo to be included; which enacteth, that no perſon ſhall be licenſed to be a buyer of cattle, otherwiſe than by 5 *El. c.* 12.

5. By the 3 *C. c.* 1. No drover, with any cattle, ſhall travel on the lord's day; on pain of 20*s.* which may be levied by the conſtable or churchwarden, by warrant of one juſtice, on conviction on his view, or by confeſſion, or the oath of two witneſſes; one third to the informer, and two thirds to the poor. Driving on ſundays.

IV. Stealing, killing, or maiming of cattle.

1. By the 22 & 23 *C.* 2. *c.* 7. If any perſon ſhall in the night time maliciouſly, unlawfully, and willingly *kill or deſtroy* any horſes, ſheep, or other cattle, he ſhall be guilty of felony; but without corruption of blood, or loſs of dower: But to avoid judgment of death, or execution thereupon, he may chuſe to be tranſported to ſome of the plantations, to be mentioned in the judgment, for 7 years. Killing or wounding in the night.

And if any perſon ſhall in the night time maliciouſly, unlawfully, and willingly *maim, wound, or otherwiſe hurt* any horſes, ſheep, or other cattle, whereby the ſame ſhall not be killed or utterly deſtroyed; he ſhall forfeit treble damages, by action of treſpaſs, or upon the caſe:

And three juſtices (1 *Q.*) may inquire by a jury and witneſſes; and may iſſue warrants for ſummoning jurors, and for apprehending perſons ſuſpected, and take their examinations; and cauſe witneſſes to come before them to give information on oath, ſo as no perſon to be examined ſhall be proceeded againſt, for any offence concerning which he is examined as a witneſs, and ſhall make a true diſcovery: and if ſuch witneſs, being ſummoned, refuſe to appear, they may commit him, till he ſubmit to be examined on oath.

2. And by the 14 *G.* 2. *c.* 6. and 15 *G.* 2. *c.* 34. If any perſon ſhall felonioufly drive away, or in any other manner feloniouſly ſteal any ox, bull, cow, calf, ſteer, bullock, heifer, ſheep, or lamb; or ſhall wilfully kill any ox, bull, cow, calf, ſteer, bullock, heifer, ſheep, or lamb, with a felonious intent to ſteal the whole carcaſs, or any part thereof; or ſhall aſſiſt or aid in committing any ſuch offence, he ſhall be guilty of felony without benefit of clergy. Stealing, or killing with intent to ſteal; 10*l.* reward.

And every perſon, who ſhall apprehend and proſecute to conviction any offender, ſhall have 10 *l.* reward. In order to which, he ſhall have a certificate ſigned by the judge, before the end of the aſſizes, certifying the conviction, and where the offence was committed, and that ſuch offender was apprehended and proſecuted by the perſon claiming the reward; and if there are ſeveral claimants, the judge ſhall in the ſaid certificate direct what ſhare ſhall be paid to each claimant. Which certificate being tendred to the ſheriff, he ſhall within a month pay the ſame without deduction; on pain of forfeiting double, with treble coſts. The ſame to be allowed in his accounts, or to be repaid to him out of the treaſury.

Killing or wounding by the Black act.

3. And by the 9 *G. c.* 22. commonly called the Black act, which is inſerted at large under the title of that name, If any perſon ſhall unlawfully and maliciouſly kill, maim, or wound any cattle, he ſhall be guilty of felony without benefit of clergy; but without corruption of blood.

And the hundred ſhall be anſwerable for the damages, not exceeding 200 *l.*

And if any perſon ſhall apprehend, or cauſe to be convicted, any offender, and ſhall be killed, or wounded ſo as to loſe an eye or the uſe of any limb, in endeavouring to apprehend or ſecure him; on proof thereof at ſeſſions, and on certificate thereof from thence, the ſheriff ſhall within 30 days pay to the perſon intitled the ſum of 50 *l.* to be repaid to him out of the treaſury.

A. A licence for a drover of cattle.

Weſtmorland. AT *the general quarter ſeſſions of the peace held at* ——— *for the county aforeſaid, this* ——— *day of* ——— *We* A. B. C. D. *and* E. F. *eſquires, juſtices of the peace for the ſaid county (one whereof is of the* Quorum) *have licenſed, and by theſe preſents do licenſe and admit* G. H. *of* ——— *in the ſaid county, yeoman, being upwards of* 30 *years of age, and being alſo a married man, and an houſholder, and having been an inhabitant in the ſaid county for three years laſt paſt, to be a common drover of cattle, for and during the ſpace of one whole year from the date hereof; ſo as he do uſe and follow the ſaid buſineſs, according to the laws in that behalf made. Given under our hands and ſeals the day and year firſt abovewritten.*

B. Condition of the recognizance.

——— *That he ſhall not foreſtall, or ingroſs, or do any thing contrary to the true meaning of the ſtatutes made againſt regrators, foreſtallers, and ingroſſers, or any thing therein contained.*

Certiorari.

A Juſtice of the peace may deliver or ſend into the king's bench, an indictment found before him, or a recognizance of the peace taken by him, or a force recorded by him, without any *certiorari*. *Dalt. c.* 195. What things may be certified without a writ of certiorari.

Concerning which writ of *certiorari*, I will ſhew

I. In what caſes it is grantable.
II. How to be granted and allowed.
III. The effect of it.
IV. The return of it.

I. In what caſes it is grantable.

1. A *certiorari* lies in all judicial proceedings, in which a writ of error does not lie; and it is a conſequence of all inferior juriſdictions erected by act of parliament to have their proceedings returnable in the king's bench. L. *Raym.* 469, 580. In caſes where a writ of error lies not.

2. And therefore a *certiorari* lies to juſtices of the peace, even in ſuch caſes which they are impowered by ſtatute finally to hear and determine; and the ſuperintendency of the court of king's bench is not taken away without expreſs words. 2 *Haw.* 286. Where not ſpecially prohibited by ſtatute.

3. But it ſeems agreed, that a *certiorari* ſhall never be granted to remove an indictment after a conviction, unleſs for ſome ſpecial cauſe; as where the judge below is doubtful what judgment to give. 2 *Haw.* 288. After conviction.

And, *E.* 18 *G.* 2. *K.* and *Nicolls.* An indictment was removed into the court of king's bench by *certiorari*, after conviction, and before judgment. Upon which a doubt aroſe, what the court could do, the *certiorari* being brought before judgment; and this court not being apprized of the circumſtances of the offence, could not tell what judgment to give: and in *Carth.* 6. it is ſaid, they cannot give judgment. A rule therefore was made, to ſhew cauſe why the *certiorari* ſhould not be quaſhed, ſo as to remit it back to the ſeſſions; which was afterwards made abſolute. *Strange* 1227.

4. Alſo, it ſeems a good objection againſt the granting a *certiorari*, that iſſue is joined in the court below, and a *venire* awarded for the trial of it. 2 *Haw.* 288. After iſſue joined.

5. It hath been adjudged, that wherever a *certiorari* is by law grantable for an indictment, the court is bound of right to award it at the inſtance of the king, becauſe every indictment is the ſuit of the king, and he has a prerogative of ſuing in what court he pleaſes. But it ſeems to be agreed, that it is left to the diſcretion of the court, either to grant or deny it at the prayer of the defendant. 2 *Haw.* 287. Where the court is bound of right to grant it.

6. And it ſeems that the court will not ordinarily, at the prayer of the defendant, grant a *certiorari* for the removal of an indictment Not for heinous crimes.

ment of perjury, or forgery, or other heinous misdemeanor; for such crimes deserve all possible discountenance, and the *certiorari* might delay, if not wholly discourage the prosecution. 2 *Haw.* 287.

II. How to be granted and allowed.

How to be granted on indictment or presentment.

1. On *indictment or presentment:* By the 5 *W. c.* 11. and 8 & 9 *W. c.* 33. it is enacted, that *in term time, no writ of* certiorari, *at the prosecution of any party indicted, shall be granted out of the king's bench, to remove any indictment or presentment of trespass or misdemeanor, before trial had, from before the justices in sessions; unless such* certiorari *shall be awarded upon motion of counsel, and by rule of court made for the granting thereof.*

But in the vacation, writs of certiorari *may be granted by any justice of the king's bench, whose name shall be indorsed on the writ, and also the name of the person at whose instance it is granted.*

And all the parties indicted, prosecuting such certiorari, *shall before the allowance thereof, find two sufficient mainucaptors, who shall enter into a recognizance before a justice of the king's bench (who shall indorse the same on the writ), or before a justice of the peace of the county or place, in the sum of* 20 l. *with condition, at the return of the writ, to appear and plead to the said indictment or presentment, in the said court of king's bench, and at his own costs and charges to cause and procure the issue that shall be joined thereupon, or any plea relating thereunto, to be tried at the next assizes for the county wherein the indictment or presentment was found, after such* certiorari *shall be returned, or the next term if in* London, Westminster, *or* Middlesex, *unless the court shall appoint another time, and if so, then at such other time; and to give due notice of such trial, to the prosecutor or his clerk in court; and also that the party prosecuting the writ of* certiorari, *shall appear from day to day, in the said court of king's bench, and not depart until he shall be discharged by the court.*

And the said recognizance shall be certified into the king's bench, with the certiorari *and indictment, to be there filed, and the name of the prosecutor (if he shall be the party grieved), or some publick officer, shall be indorsed on the indictment.*

And if the defendant prosecuting the writ of certiorari, *be convicted of the offence for which he was indicted, then the court of king's bench shall give reasonable costs to the prosecutor, to be taxed according to the course of the said court, who shall for the recovery thereof, within ten days after demand and refusal of payment, on oath, have an attachment awarded; and the recognizance not to be discharged till the costs are paid.*

But if the person procuring the certiorari, *being the defendant, shall not, before allowance thereof, procure such mainucaptors to be bound as aforesaid, the justices may proceed to the trial of the indictment in sessions, notwithstanding the writ of* certiorari *delivered.*

At the prosecution of any party indicted] This extends only to *certiorari's* procured by persons indicted; from whence it follows, that those which are procured by the prosecutor of an indictment, remain as they were at common law. 2 *Haw.* 292.

To

To be tried at the next aſſizes] But the recognizance ſhall not be forfeited, unleſs the proſecutor give rules according to the courſe of the court. 2 *Haw.* 293.

Reaſonable coſts] The maſter of the crown office, in taxing the coſts, ought only to conſider thoſe, which are ſubſequent to the *certiorari*. 2 *Haw.* 292.

May proceed to the trial] Nevertheleſs they muſt make a return to the *certiorari*, otherwiſe they will be in contempt to the court; for all writs muſt be obeyed, unleſs good cauſe be ſhewn to the contrary; and the proper way of ſhewing it, is to return it. 2 *Haw.* 292.

2. On a *conviction or order*: By the 13 G. 2. *c.* 18. it is enacted, that *no* certiorari *ſhall be granted, to remove any conviction, judgment, order, or other proceedings, before any juſtice of the peace, or quarter ſeſſions, unleſs it be applied for in ſix kalendar months after ſuch proceedings had or made, and unleſs it be duly proved upon oath, that the party ſuing forth the ſame, hath given ſix days notice thereof in writing, to the juſtice or juſtices, or two of them (if ſo many there be), before whom ſuch proceedings have been, to the end that ſuch juſtices, or the parties therein concerned, may ſhew cauſe if they ſo think fit, againſt the iſſuing the* certiorari. How to be granted on an order or conviction.

And by 5 G. 2. 19. *No ſuch* certiorari *ſhall be allowed, to remove any ſuch judgment or order, unleſs the party proſecuting the* certiorari, *before the allowance thereof, enter into a recognizance with ſufficient ſureties, before a juſtice of the county or place, or before the juſtices at ſeſſions where ſuch judgment or order ſhall have been given or made, or before a juſtice of the king's bench, in* 50*l. with condition to proſecute the ſame, at his own coſts and charges with effect, without wilful delay, and to pay the party in whoſe favour the judgment or order was made, within a month after the ſame ſhall be confirmed, his full coſts to be taxed according to the courſe of the court where ſuch confirmation ſhall be. And if he ſhall not enter into ſuch recognizance, or ſhall not perform the conditions, the juſtices may proceed and make ſuch further order for the benefit of the party for whom the judgment ſhall be given, in ſuch manner as if no* certiorari *had been granted.*

The ſaid recognizance to be certified into the king's bench, and there filed, with the certiorari *and order or judgment removed thereby.*

And if the order or judgment ſhall be confirmed by the court, the perſon intitled to the coſts, for the recovery thereof, within ten days after demand made, upon oath of ſuch demand and refuſal of payment, ſhall have an attachment granted for the contempt; and the recognizance not to be diſcharged till the coſts are paid and the order complied with.

E. 1 *An.* A rule was made in the court of king's bench, that no *certiorari* ſhould be granted to remove orders of juſtices, from which the law has given an appeal to the ſeſſions, before the matter be determined on the appeal, becauſe it hinders the privilege of appealing; and that if any order be removed before appeal, it ſhould be ſent down again: But if the time of appeal be expired, that

that caſe is not within the rule: By *Holt* Ch. J.—But afterwards, *M.* 4 *An.* in the caſe of *Shellington*, it was held, that advantage muſt be taken of this rule upon the motion to file the order; for that after it is filed, it is too late. 1 *Salk.* 147.

But in the caſe of the borough of *Warwick*, *M.* 8 *G.* 2. There was an appeal from a poor rate; and the ſeſſions made an order that the churchwardens ſhould produce the books at an adjourned day; before which, a *certiorari* was brought to remove that order: And it was held to lie, though the appeal was depending; elſe the order muſt be obeyed before the validity of it can be determined. It was alſo held, that an appointment of overſeers may be removed before an appeal to the ſeſſions; for the rule laid down in 1 *Salk.* 147. extends only to the caſe where there is a limited time for appealing, as to the *next* quarter ſeſſions; but the ſtatute of the 43 *El. c.* 2. is not ſo reſtrained: and conſequently it can never be ſaid, that the time for appealing is out. And if the appeal from an appointment is lodged, there can be no *certiorari*, till the ſeſſions hath made a determination; and a *certiorari* brought, pending ſuch appeal, ſhall be ſuperſeded. *Strange* 991.

III. The effect of it.

Subſequent proceedings void.

1. After a *certiorari* is allowed by the inferior court, it makes all the ſubſequent proceedings on the record that is removed by it erroneous. 2 *Haw.* 293.

Except where the jury is ſworn.

2. But it hath been adjudged, that if a *certiorari* for the removal of an indictment before juſtices of the peace be not delivered, before the jury be ſworn for the trial of it, the juſtices may proceed. 2 *Haw.* 294.

And after judgment.

3. And the juſtices may ſet a fine to compleat their judgment, after a *certiorari* delivered. L. *Raym.* 1515.

Removes all after the teſte of it.

4. A *certiorari* removes all things done between the teſte and return. L. *Raym.* 835, 1305.

Removes the record itſelf.

5. A *certiorari* removes the record it ſelf out of the inferior court; and therefore if it remove the record againſt a principal, the acceſſary cannot there be tried. 2 *Haw.* 325.

How far it ſuperſedes the obligation of a recognizance.

6. It hath been holden, that a *certiorari* for the removal of a recognizance for the good behaviour, or an appearance at ſeſſions, will ſuperſede the obligation of it: but this would be highly inconvenient, and the contrary ſeems to be ſupported by the better authority. 2 *Haw.* 292.

Caſe where it is awarded againſt law.

7. If a *ſuperſedeas* come out of a ſuperior court, to the juſtices, they ought to ſurceaſe, altho' the *ſuperſedeas* be awarded againſt law; for they are not to diſpute the command of a ſuperior court, which is a warrant to them. *Crom.* 129.

IV. The return of it.

Return of the certiorari.

1. Every return of a *certiorari* ought to be under ſeal. 2 *Haw.* 294.

2. And altho' the *cuſtos rotulorum* keep the records, yet muſt the juſtices, to whom it is directed, return the *certiorari*; and therefore

if it is directed to the juſtices of the peace, and the clerk of the peace only return it, nothing is thereby removed. 2 *Haw.* 294.

3. The *certiorari* may be ſometimes to remove and ſend up the record it ſelf, and ſometimes but only the tenor of the record (as the words therein be), and it muſt be obeyed accordingly. *Dalt. c.* 195. 2 *Haw.* 295.

4. A return was in paper, and for that reaſon held not good. 4 *W. K. B. Nelſ.* 178.

5. Upon a *certiorari* to remove an indictment of a riot, or forcible entry, or the like, the return muſt have theſe words, *as alſo to hear and determine divers felonies* &c. according to the commiſſion; for if the return mentions only that they are juſtices of the peace, without ſuch words, the return is inſufficient. *Dalt. c.* 195.

6. If the perſon to whom a *certiorari* is directed, do make a falſe return, yet the court will not ſtay filing it on affidavit of its being falſe, except in publick caſes, as in caſes of commiſſioners of ſewers, or for not repairing highways, or for ſome ſuch ſpecial cauſes; becauſe the remedy for a falſe return is either an action on the caſe at the ſuit of the party grieved, or an information at the ſuit of the king. *Dalt. c.* 195.

7. If the perſon to whom the *certiorari* is directed, do not make a return, then an *alias*, that is, a ſecond writ; then a *pluries*, that is, a third writ, or *cauſam nobis ſignifices*, ſhall be awarded, and then an attachment. *Crom.* 116.

Beſides theſe general rules, in common to all *certioraries*, there are many times ſpecial directions about granting, and allowing or not allowing them, in particular caſes, which are treated of under their reſpective titles; ſuch as highways, game, tithes, ſwearing, and many others.

The return of a *certiorari* may be thus:

Firſt, On the backſide of the writ indorſe theſe or the like words:

The execution of this writ appears in a ſchedule to the ſame writ annexed.

And that ſchedule may be thus, on a piece of parchment by it ſelf, and filed to the writ:

Weſtmorland I *Sir* Philip Muſgrave, *baronet, one of the keepers of the peace and juſtices of our lord the king aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, by virtue of this writ to me delivered, do under my ſeal certify unto his majeſty in his court of king's bench, the indictment, of which mention is made in the ſaid writ, together with all matters touching the ſame indictment. In witneſs whereof I the ſaid Sir* P. M. *have to theſe preſents ſet my ſeal. Given at* —— *in the ſaid county, the* —— *day of* —— *in the* —— *year of the reign of* ——.

Then

Then take the record of the indictment, and close it within the schedule, and seal and send them up both together with the *certiorari*.

Challenge. See Jurors.
Champerty. See Maintenance.
Chance medley. See Homicide.

Cheat.

1. OF cheats punishable by publick prosecution, there are two kinds; by the common law, and by statute.

2. Those which are punishable at the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment; or by suppressing a will; and such like. 1 *Haw.* 188.

3. It seemeth to be the better opinion, that the deceitful receiving of money from one man, to another's use, upon a false pretence of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which, common prudence and caution may be a sufficient security. 1 *Haw.* 188.

4. A person for a counterfeit pass, was adjudged to the pillory and fined. *Dalt. c.* 32.

5. On an indictment against the defendant, a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it is only a private cheat, and not of a publick nature. It was answered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. And the court unanimously agreed not to quash it. *T.* 16 *G.* 2. *K.* and *Wood. Sess. C. V.* 1. 217.

6. A person falsly pretending that he had power to discharge soldiers, took money of a soldier to discharge him; and being indicted for the same, the court held the indictment to be good. *T.* 3 *C. Serlestead's case.* 1 *Latch* 202.

7. As there are frauds which may be relieved civilly, and not punished criminally (with the complaints whereof the courts of equity do generally abound); so there are other frauds, which in a special

a ſpecial caſe may not be helped civilly, and yet ſhall be puniſhed criminally: Thus if a minor goes about the town, and pretending to be of age, defrauds many perſons by taking credit for conſiderable quantities of goods, and then inſiſting on his non-age; the perſons injured cannot recover the value of their goods, but they may indict and puniſh him for a common cheat. *Barl.* 100.

8. Offences of this kind by ſtatute, depend upon the 33 *H.* 8. *c.* 1. by which it is enacted, that *if any perſon ſhall falſly and deceitfully obtain, or get into his hands or poſſeſſion, any money, goods, cattels, jewels, or other things, of any perſon, by colour and means of any falſe privy token, or counterfeit letter made in another man's name; and ſhall be convicted thereof, by examination of witneſſes, or confeſſion, at the aſſizes or ſeſſions, or by action in any court of record; he ſhall have ſuch puniſhment by impriſonment, pillory, or other corporal pain (except death) as the court ſhall appoint. Saving to the party grieved ſuch remedy by action or otherwiſe, for the goods ſo obtained, as he might have had by the common law.*

And two juſtices (1 Q.) *may call and convent by proceſs or otherwiſe* (A), *to the aſſizes or ſeſſions, any perſon ſuſpected, and commit or bail him to the next aſſizes or ſeſſions.*

Get into his hands or poſſeſſion) A perſon endeavouring by a counterfeit letter to defraud another of goods, and being apprehended on ſuſpicion of ſuch fraud, before he hath got the goods into his poſſeſſion, ſeems not to be within this ſtatute. *E.* 3 *G.* 2. *K.* and *Brian. Seſſ. C. V.* 2. 27.

Falſe privy token) On motion to quaſh an indictment, which was, that the defendant came pretending that ſuch a perſon had ſent him to receive 20 *l.* and received it, whereas ſuch perſon did not ſend him: By the court, It is not indictable unleſs he came with *falſe tokens*; for we are not to indict one man for making a fool of another. *Black.* 79.

H. 13 *G.* 2. *K.* and *Munoz.* It was adjudged, that an indictment averring the offence to be by falſe tokens, without ſhewing what thoſe falſe tokens are, is not ſufficient; and that the fraudulently procuring a note from a perſon, by falſly affirming that there was one in the next room that would pay the money due upon it, whereas in fact there was no ſuch perſon in the next room, is not a *falſe token*, but a falſe affirmation only. *Seſſ. C. V.* 2. 201. *Strange* 1121.

Note; The ſtatute ſays a falſe *privy* token.

Corporal pain] Lord *Coke* obſerves hereupon, that for this offence the offender cannot be fined, but corporal pain only inflicted. 3 *Inſt.* 133.

But Mr. *Hawkins* obſerves, that there is precedent in *Cro. Car.* 564. by which it appears, that one convicted on ſuch a proſecution hath been adjudged not only to ſtand on the pillory, but alſo to pay a fine of 500 *l.* and to be bound with good ſureties to the good behaviour. 1 *Haw.* 188.

Commit or bail him] In this caſe the juſtices ſhall do well to take examination of the offence, and to certify the ſame to the ſeſſions

or

or gaol delivery, and withal to bind over the informers and witneſſes to give evidence therein. *Dalt. c.* 32.

A. Warrant of two juſtices to apprehend an offender; on 33 *H.* 8. *c.* 1.

Weſtmorland { To the conſtable of ———

WHEREAS *complaint hath been made unto us whoſe names and ſeals are hereunto ſet, two of his majeſty's juſtices of the peace for the ſaid county, and one of us of the* quorum, *upon the oaths of* A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, that on the* ——— *day of* ——— A. O. *of* ——— *yeoman, did by a falſe privy token* [or, *counterfeit letter*] *that is to ſay, by* [here particularize the offence] *falſly and deceitfully obtain and get into his hands and poſſeſſion* [here mention the things] *from* C. I. *of* ——— *contrary to the ſtatute in that caſe made: Theſe are therefore to command you, upon ſight hereof, forthwith to bring the ſaid* A. O. *before us at* ——— *on the* ——— *day of* ——— *to anſwer to the ſaid complaint, and farther to be dealt withal according to law. Given under our hands and ſeals the* ——— *day of* ———.

Cheeſe. See Butter.

Chocolate. See Exciſe.

Church and Church Yard.

Original of the word church.

1. THE ancient Saxon word is *cyrce*, the Daniſh *kircke*, the Belgick *kercke*, the Cymbrian *kurk*; probably from the Greek word κυριακὸν, belonging to the lord, or κυρίε οἶκος, the lord's houſe: ſo that we have loſt the ancient pronunciation of the word (except in the northern parts of *England*, and in *Scotland*) by ſoftening the letters *c* or *ch*, as we have done in many caſes; which letters the ancient *Greeks* and *Romans* always pronounced hard, as the letter *k*.

Uniting of churches.

2. *In cities and towns corporate, the biſhop (with the conſent of the mayor, aldermen, and juſtices of the peace, and of the patron) may unite two churches or chapels; and make order, with the like conſent, that the patrons preſent by turns, having regard to the value of the livings united: and the incumbents thereof ſhall be graduates.* 17 C. 2. c. 3.

New churches.

3. Clauſes are commonly inſerted in the ſeveral acts of parliament for making proviſion for the rectors of new churches, which clauſes give certain powers to juſtices of the peace, in relation to the aſſeſſments to be made for that purpoſe.

4. No

4. *No fairs nor markets ſhall be kept in church yards.* 13 Ed. 1. ſt. 2. c. 6. Markets in the church yard.

5. *Clergymen ſhall not be arreſted, and drawn out of any church or church yard, whilſt they attend to divine ſervice; on pain of impriſonment of the offender, and ranſom at the king's will, and ſatisfaction to the party arreſted.* 50 Ed. 3. c. 5. 1 R. 2. c. 15. Arreſt in the church or church yard.

Alſo it is ſaid, that arreſts in civil caſes ought not to be of perſons going to or coming from church; but that a warrant from a juſtice of the peace for the king may be executed in ſuch caſe. *Cro. Car.* 602. *Cro. Ja.* 321. 2 *Bulſtr.* 72.

But altho' the officer may be puniſhed for the ſame either in the ſpiritual or temporal courts, yet the arreſt (if not on a *Sunday*) is good in law. *Watſon* 636.

6. *If any perſon ſhall, by words only, quarrel, chide, or brawl, in any church or church yard, the biſhop (on proof of two witneſſes) may ſuſpend every layman, being an offender,* ab ingreſſu eccleſiæ; *and every clergyman from the miniſtration of his office, ſo long as he ſhall think meet.* 5 & 6 Ed. 6. c. 4. ſ. 1. Brawling in the church or church yard.

7. *If any ſhall ſmite, or lay any violent hands on another in any church or church yard, he ſhall be deemed* ipſo facto *excommunicate, and be excluded from the fellowſhip and company of* Chriſt's *congregation.* 5 & 6 Ed. 6. c. 4. ſ. 2. Striking in the church or church yard.

Lay any violent hands] But churchwardens, or perhaps private perſons, who whip boys for playing in the church, or pull of the hats of thoſe who obſtinately refuſe to take them off themſelves, or gently lay their hands on thoſe who diſturb the performance of any part of divine ſervice, and turn them out of the church, are not within the meaning of this ſtatute. 1 *Haw.* 139.

Shall be deemed ipſo facto *excommunicate*] And he ſhall not excuſe himſelf by ſhewing that the other aſſaulted him. 1 *Haw.* 139.

Ipſo facto] Nevertheleſs, in this and other like caſes, there ought either to be a precedent conviction at law, which muſt be tranſmitted to the biſhop; or elſe the excommunication muſt be declared in the ſpiritual court upon a proper proof of the offence there; for it is implied in every penal law, that no one ſhall incur the penalty thereof, till he be found guilty upon a lawful trial. 1 *Haw.* 139.

8. *If any ſhall maliciouſly ſtrike another with any weapon, in any church or church yard, or ſhall there draw any weapon with intent to ſtrike, and ſhall be convicted thereof by verdict of* 12 *men, or confeſſion, or by two witneſſes, before the judges of aſſize, or juſtices of the peace in their ſeſſions, he ſhall be adjudged to have one of his ears cut off; and if he have no ears, he ſhall be burned in the cheek with an hot iron having the letter* F, *whereby he may be known and taken for a fray maker and fighter; and he ſhall alſo ſtand* ipſo facto *excommunicate.* 5 & 6 Ed. 6. c. 4. ſ. 3. Striking with a weapon in the church or church yard.

9. He who ſteals goods belonging to a pariſh church, may be indicted for ſtealing the goods of the pariſhioners. 1 *Haw.* 94. Sacrilege.

For other matters, ſee title **Churchwardens.**

Churchwardens.

I. Who are exempted from being churchwardens.
II. Chuſing and ſwearing of churchwardens, with their duty thereupon.
III. Their duty in levying rates; and therein of veſtries, and ſelect veſtries.
IV. Their duty as to repairs; and therein concerning church ſeats.
V. Their duty as to ſundry other matters.
VI. Concerning preſentments; and therein of ſidesmen or aſſiſtants.
VII. Their accounting.
VIII. Their puniſhment on miſbehaviour.
IX. Their indemnity on doing their duty.

I. Who are exempted from being churchwardens.

Attorneys.

1. A Counſellor, or attorney, ought not to be choſen churchwarden; and if he is, he may have a prohibition, by reaſon of his attendance on the courts at *Weſtminſter*. 2 *Roll's Abr.* 272.

Apothecaries.

2. Apothecaries, who have ſerved 7 years, ſhall be exempted from the office of churchwarden. 6 *W. c.* 4.

Diſſenting miniſters.

3. Diſſenting teachers or preachers, in holy orders or pretended holy orders, being duly qualified, are exempted from the office of churchwarden. 1 *W. Seſſ.* 1. *c.* 18.

Other diſſenters.

4. Other diſſenters, ſcrupling to take upon them the office, may execute the ſame by a ſufficient deputy, to be approved of in like manner as other churchwardens. 1 *W. Seſſ.* 1. *c.* 18.

Perſon having convicted a felon.

5. All perſons who have proſecuted a felon to conviction, are exempted from the office of churchwarden, in the pariſh where the offence was committed. 10 & 11 *W. c.* 23. *ſ.* 2.

II. Chuſing and ſwearing churchwardens; with their duty thereupon.

When to be choſen, and by whom.

1. Churchwardens ſhall be choſen yearly in *Eaſter* week, by the joint conſent of the miniſter and pariſhioners, if it may be; but if they cannot agree, the miniſter ſhall chuſe one, and the pariſhioners another. *Can.* 89.

But where there is a cuſtom for the pariſhioners to chuſe both, that cuſtom ſhall continue. *Cod.* 242.

2. A

2. A perſon choſen churchwarden, refuſing to take his office and oath, may be excommunicated for the refuſal; and no prohibition will lie. *Cod.* 243. Refuſing to take the office.

3. And the eccleſiaſtical judge, refuſing to ſwear him, may be compelled by a *mandamus*. *Cod.* 243. Refuſing to ſwear them.

4. The churchwardens oath, as ſaid to have been agreed on, upon mutual conſultation between the civilians and common lawyers, is as follows; Churchwardens oath.

" You ſhall ſwear truly and faithfully to execute the office of a " churchwarden within your pariſh, and according to the beſt of " your ſkill and knowledge preſent ſuch things and perſons as to " your knowledge are preſentable by the laws eccleſiaſtical of this " realm: So help you god and the contents of this book." *Cod.* 243.

5. Churchwardens being thus ſworn, are ſo far incorporated by law, as to ſue for the goods of the church, and to bring an action of treſpaſs for them; and alſo to purchaſe goods for the uſe of the pariſh; but they are not a corporation in ſuch ſort as to purchaſe lands, or take by grant, except in *London* by cuſtom. *Cod.* 241. Churchwardens a body corporate.

6. Churchwardens ſhall continue in office, till the new churchwardens be ſworn. *Can.* 118. How long they ſhall continue.

III. Their duty in levying rates; and therein of veſtries, and ſelect veſtries.

1. The rates muſt be made with the conſent of the major part of the pariſhioners, houſekeepers, or occupiers of land. In order to which, publick notice of a veſtry (a place ſo called from the veſtments of the miniſter kept there) ought to be given the *Sunday* before, either in the church after divine ſervice is ended, or elſe at the church door as the pariſhioners come out; both of the calling of the ſaid meeting, and alſo of the time and place of the aſſembling of it. And it will be faireſt then alſo to declare for what buſineſs the ſaid meeting is to be held, that no one may be ſurprized, but that all may have full time before, to conſider of what is to be propoſed at the ſaid meeting. And it is uſual that for half an hour before it begins, one of the church bells be tolled to give the pariſhioners notice when they are met. 5 *Co.* 67. *Par. L.* 54. Summoning a veſtry.

2. At the common law, every pariſhioner who paid to the church rates, and no other, had a right to vote. *Par. L.* 56. And thoſe that pay no church rates ſhall have no vote in affairs relating to it, except it be the rector or vicar. *Wood* 155. Who ſhall have a vote in the veſtry.

3. All perſons who have a vote in the veſtry have an equal right, and neither the miniſter nor churchwardens, without a ſpecial cuſtom, can adjourn the veſtry; but this can only be done by a majority of the whole aſſembly. *Strange* 1047. Who may adjourn the veſtry.

4. When the churchwardens and pariſhioners are there met, they are to conſider what ſum of money it will be neceſſary to raiſe for ſuch repairs as ſhall then be needful; and after they have agreed what ſum is fit, they are to make an equal levy. *Degge* 171. Laying the rates.

Majority to bind the parish.

5. And the major part of them that appear, shall bind the parish; or if none appear, the churchwardens alone may make the rate; because they, and not the parishioners, are to be cited and punished, in defect of repairs. *Cod.* 220.

Entring in a book.

6. It is most convenient, that every parish act there be entred in the parish book of accounts, and every man's hand consenting to it be set thereto; for then it will be a certain rule for the churchwardens to go by. *Par. L.* 55.

Select vestry.

7. By custom there may be select vestries, of a certain number of persons elected yearly, to make rates, and manage the concerns of the parish for that year: and such custom is a good custom. *Read. Ch. Service. Cod.* 246. *Strange* 728.

Two rates; one for the fabrick, another for ornaments.

8. It is holden, that a rate for the reparation of the fabrick of a church is real, charging the land, and not the person; but a rate for ornaments is personal, upon the goods, and not upon the land. *Cod.* 220.

And in *Jeffrey*'s case, 5 *Co.* 67. it was solemnly adjudged, that the rates for the repair of the church shall be laid upon every occupier of lands in the parish, altho' such occupier live in another parish; and such person may come to the vestries of the parishioners, and vote in the making a rate: but he shall not be charged towards the ornaments of the church, as for bells, repair of seats, bread and wine, clerk's wages, visitation charges, and the like, by reason of such lands; for that the personal estates of the inhabitants are chargeable with every thing that doth not relate to the fabrick of the church, or repairs of the fences of the church yard, or such other things as concern the freehold.

And therefore some have been of opinion, that churchwardens should make two rates; one upon lands and houses, which may concern the freehold of the church, and another upon personal estates and stock, to defray other expences. But as this method creates confusion, so it is seldom practised.

And Sir *Simon Degge* says, that he conceives the law to be clear otherwise; and that a foreigner who holds lands in the parish is as much obliged to pay towards the bells, seats, and ornaments, as to the repair of the church; otherwise there would be great confusion in making several levies, which he never observed to be practised within his knowledge. But he leaves it a *quæry*, among a diversity of opinions. *p.* 173.

And Mr. *Shaw*, in his parish law, having cited the authors who hold these different opinions says, that the practice generally now goes according to the opinion last mentioned, namely, that foreigners occuping lands within the parish shall be charged to both; and that the ecclesiastical judges, as well as the temporal, for the ease and convenience which accrues from the making of one levy for all, do give countenance hereto, and begin to treat the contrary opinion as obsolete and out of doors. *p.* 92.

Equal pound rate.

9. A taxation by the pound rent is the most equitable way, and not according to the quantity of the land. *Wood* 156.

Tenant to be charged, and not the landlord.

10. Where lands are in farm, not the lessor, but the tenant shall be rated and pay. *Cod.* 221.

11. An

11. An impropriator, tho' bound to repair the chancel, is alſo bound to contribute to the reparations of the church, if he hath lands in the pariſh, which are not parcel of the parſonage. *Cod.* 221, 223. Impropriator how far chargeable.

12. If any perſon find himſelf aggrieved at the inequality of the aſſeſſment, his appeal muſt be to the eccleſiaſtical judge. *Degge* 172. Appeal againſt the rates.

And in ſuch caſe, if he will be relieved, he muſt ſhew, that he is illegally or unequally taxed in reſpect of the quantity of his land, as being rated for more than he has, or that the land which he hath is over rated, or that the rate was needleſs, or that ſome lands in the pariſh are omitted in the rate. *Wood* 155.

13. If any refuſe to pay the rates, being demanded by the churchwardens, they are to be ſued for in the eccleſiaſtical courts, and not elſewhere. *Cod.* 219. *Degge* 171. Rate how to be recovered.

Alſo a quaker, refuſing to pay church rates, may be ſued, as other pariſhioners, in the eccleſiaſtical court; or he may be proſecuted before the juſtices of the peace, in the ſame manner as for his tithes.

IV. Their duty as to repairs; and therein concerning church ſeats.

1. Of common right, the ſoil and freehold of the church is the parſon's; the uſe of the body of the church, and the repair of it, common to the pariſhioners; and the diſpoſing of the ſeats therein, the right of the ordinary. *Cod.* 221. Who ſhall repair.

2. The ſpiritual court may compel the pariſhioners to repair the body of the church, and may excommunicate every one of them till it be repaired; but thoſe that are willing to contribute ſhall be abſolved, till the greater part agree to a tax. *Read. Ch. Service.* Who may compel the repairs to be made.

3. If the churchwardens erect or add any thing new, either to the fabrick of the church, utenſils, or church yard, they muſt have the conſent of the pariſhioners; and if ſuch additions are in the church, the biſhop's licence is alſo neceſſary. But where neceſſary repairs are wanting, the greater part of the pariſh will bind the leſs; and if the major part will not conſent, where repairs are neceſſary, the churchwardens may repair without their conſent, if upon notice given they refuſe to meet, or when they are met, refuſe to make a rate. But if a church fall down, the pariſhioners are not bound to rebuild it. *Read. Ch. Service.* 1 *Ventr.* 367. Difference between adding ſomething new, and repairing the old.

4. But if a church be ſo much out of repair, that it is neceſſary to pull it down, or ſo little, that it needs to be enlarged, the major part of the pariſhioners may make a rate for new building, or inlarging, as there ſhall be occaſion. This was declared in the 29 C. 2. by all the three courts ſucceſſively; notwithſtanding the cauſe was laboured by a great number of quakers, who oppoſed the rate. *Cod.* 221. Majority may rebuild.

5. The parſon, that is, the ſpiritual rector, as alſo the lay impropriator, are bound by common right to repair the chancel, and Repairing the chancel.

is thereupon intitled to the chief ſeat therein, unleſs another hath it by preſcription; yet he hath not the diſpoſal of the ſeats therein, but the b ſhop. *Cod.* 223, 224.

Repairing an ile. 6. An ile in a church, which hath time out of mind belonged to a particular houſe, and been maintained and repaired by the owner of that houſe, is part of his frank tenement, and the ordinary cannot diſpoſe of it, or intermeddle in it. *Cod.* 221.

Seat inſeparable from the houſe. 7. A ſeat, or priority in a ſeat, in the body of the church, may be preſcribed for as belonging to a houſe, if it hath been uſed, and alſo repaired, time out of mind, by the inhabitants of ſuch houſe. *Cod.* 221.

And no one can claim a ſeat in a church by preſcription, as appendant or belonging to land; but it muſt be laid as belonging to a houſe, in reſpect of the inhabitancy thereof. *Wood* 153.

And therefore a ſeat may not be granted to a perſon and his heirs abſolutely; for the ſeat doth not belong to the perſon, but to the inhabitant. *Cod.* 221.

V. Their duty as to ſundry other matters.

Overſeer. 1. Every churchwarden is an overſeer of the poor, altho' every overſeer of the poor is not a churchwarden. 43 *El. c.* 2. *ſ.* 1.

And in *M.* 15 *C.* 2. A churchwarden was committed by the two next juſtices, as churchwarden, for refuſing to account for the money received and diſburſed by him; but on an *habeas corpus* he was diſcharged: becauſe by the warrant of commitment it ought to appear that he was overſeer of the poor, for by the ſtatute of 43 *El.* that is annexed to his office of churchwarden, and the juſtices have no juriſdiction over him as churchwarden, but as overſeer. *Dalt.* 186.

Church way. 2. They are to ſee that the church ways be well kept and repaired. And the right to a church way may be claimed and maintained by a libel in the ſpiritual court. 2 *Roll's Abr.* 287.

Vacancy. 3. Churchwardens have the care of a benefice during its vacancy: Having firſt taken out a ſequeſtration from the ſpiritual court, they are to manage all the profits and expences of the benefice for him that ſhall next ſucceed; plow and ſow his glebe; take in the crop; collect tithes; threſh out and ſell corn; repair houſes and fences, and the like. And they ſhall take care that during the vacancy the church ſhall be duly ſerved by a curate approved by the biſhop, whom they are to pay out of the profits of the benefice. And if the ſucceſſor thinks himſelf aggrieved by them, he may appeal to the eccleſiaſtical judge. *Par. L.* 99. *Comp. Par. Off.* 90.

Worldly calling on the lord's day. 4. They (or the conſtable) ſhall levy the penalties for perſons exerciſing their wordly calling on the lord's day. 29 *C.* 2. *c.* 7.

Profanation of the church. 5. They ſhall ſuffer no plays, feaſts, banquets, ſuppers, church ales, drinkings, temporal courts or leets, lay juries, muſters, or any profane uſage to be kept in the church or church yard. *Can.* 88.

6. They

6. They ſhall ſee that the pariſhioners reſort to church, and continue there orderly, during divine ſervice; and ſhall preſent the defaulters. *Can.* 90. Attending divine ſervice.

7. They ſhall not ſuffer any idle perſons to abide either in the church yard, or church porch, during the time of divine ſervice or preaching; but ſhall cauſe them to come in, or to depart. *Can.* 19. Loitering in the church yard.

8. They ſhall levy the forfeiture of 12*d.* a *Sunday*, on the goods of perſons not coming to church. 1 *El.* *c.* 2. Levying 12 d. a ſunday for not coming to church.

9. They (or the conſtable) ſhall levy the penalty of 3*s.* 4*d.* for uſing unlawful paſtimes on the lord's day. 1 *C.* *c.* 1. Sports on the lord's day.

10. They (or the conſtables or overſeers) ſhall levy the penalties for being preſent at unlawful conventicles. 22 *C.* 2. *c.* 1. Conventicle.

11. They ſhall, on pain of 20*l.* preſent at the ſeſſions once a year, the monthly abſence from church of all recuſants, and the names and ages of their children above nine years old, and the names of their ſervants. And if the party preſented ſhall be indicted and convicted, the churchwarden ſhall have a reward of 40*s.* to be levied of the recuſant's goods, by warrant of the juſtices in ſeſſions. 3 *J.* *c.* 4. Recuſants.

12. They ſhall keep excommunicated perſons out of the church. *Can.* 85. Excommunicate perſons.

13. They ſhall take care to have in the church a large bible, book of common prayer, book of homilies, a font of ſtone, a decent communion table, with proper coverings, the ten commandments ſet up at the eaſt end, and other choſen ſentences upon the walls, a reading deſk, and pulpit, and cheſt for alms; all at the charge of the pariſh. *Can.* 80, 81, 82, 83, 84. Ornaments of the church.

14. They ought to keep the keys of the belfrey, and to take care that the bells be not rung without good cauſe, to be allowed by the miniſter and themſelves. *Can.* 88. Bells.

15. They ſhall have a box, wherein to keep the regiſter, with three locks and keys, two keys to be kept by them, and one by the miniſter; and every *Sunday* they ſhall ſee that the miniſter enter therein all chriſtnings, weddings, and burials that have been the week before; and at the bottom of every page, they ſhall (with the miniſter) ſubſcribe their names. And they ſhall, within a month after *March* 25. yearly, tranſmit to the biſhop a copy thereof for the year before, ſubſcribed as above. Regiſter.

And ſuch regiſter, being carefully preſerved, is good evidence; and the falſifying of it is puniſhable at the common law. *Cod.* 229.

16. They ſhall, at the charge of the pariſh, with the advice and direction of the miniſter, provide bread and wine againſt the communion. *Can.* 20. Communion.

17. They (or the overſeers) ſhall levy the penalty of 5*l.* for an incumbent not reading the common prayer once a month. 13 & 14 *C.* 2. *c.* 4. Incumbent.

18. They ſhall collect money on charity briefs, on pain of 20*l.* 4 *An.* *c.* 14. Charity briefs.

19. They ſhall not ſuffer any ſtrangers to preach, but ſuch as ſhall appear qualified on ſhewing their licence; and they ſhall ſee Strange preachers.

that ſuch preachers regiſter or ſubſcribe their names in a book to be kept for that purpoſe, with the day when they preached, and the biſhop's name who granted the licence. *Can.* 50, 52.

Burying in woollen.

20. They ſhall, on certificate from the miniſter, apply to the magiſtrates, for conviction of offenders in not burying in woollen. 30 *G.* 2. *c.* 3.

Perſons denied chriſtian burial.

21. Perſons who murder themſelves, or die excommunicated, are denied chriſtian burial; and therefore the churchwardens are not to ſuffer them to be buried in the church or church yard, without ſpecial licence from the biſhop. *Degge* 183.

Eating fleſh on fiſh days.

22. They ſhall levy the penalties for eating fleſh on fiſh days. 5 *El.* *c.* 5.

Unlicenſed alehouſe.

23. They (or the conſtable) ſhall levy the penalty for keeping an unlicenſed alehouſe. 3 *C.* *c.* 3.

Drunkenneſs.

24. They ſhall receive the penalties for tipling and drunkenneſs. 4 *J.* *c.* 5. 21 *J.* *c.* 7.

Suffering tipling.

25. They (or the conſtable) ſhall levy the penalty for ſuffering tipling. 1 *J.* *c.* 9.

Spirituous liquors.

26. They ſhall receive the penalties for hawking ſpirituous liquors. 9 *G.* 2. *c.* 23.

Corn.

27. They (or the overſeers) ſhall levy the penalty for ſelling corn by a wrong meaſure. 22 *C.* 2. *c.* 8.

Butter and cheeſe.

28. They (or the overſeers) ſhall receive the penalties relating to butter and cheeſe. 13 & 14 *C.* 2. *c.* 26.

Foreign cattle.

29. They, and the overſeers, ſhall diſtribute amongſt the poor foreign cattle imported, forfeited, and killed. 32 *C.* 2. *c.* 2.

Weights and meaſures.

30. They (or the overſeers) ſhall levy the penalties relating to weights and meaſures. 16 *C.* *c.* 19. 22 *C.* 2. *c.* 8.

Hawkers and pedlars.

31. They ſhall carry hawkers and pedlars trading without licence, before a juſtice of the peace. 9 & 10 *W.* *c.* 27.

County rate.

32. They (or the overſeers) ſhall pay to the high conſtables the general county rate, out of their money collected for the poor. 12 *G.* 2. *c.* 29.

Servants firing houſes.

33. They ſhall receive the penalty for ſervants careleſly firing houſes. 6 *An.* *c.* 31.

Tracing hares.

34. They ſhall receive the penalties for tracing hares in the ſnow (and other game penalties). 1 *J.* *c.* 27.

Surveyors of the highways.

35. They ſhall join with the conſtable and ſurveyor of the highways in chuſing and returning new ſurveyors. 3 *W.* *c.* 12.

VI. Of preſentments; and therein concerning ſideſmen or aſſiſtants.

Oath to preſent.

1. Churchwardens by their oath are to preſent or certify to the biſhop, or his officer, all things preſentable by the eccleſiaſtical laws, which relate to the church, miniſter, and pariſhioners.

Book of articles.

2. The articles delivered to them for their direction, are for the moſt part founded on the book of canons made in the year 1603, and the rubricks of the common prayer.

Statute preſentments.

3. There are alſo ſeveral things which they are bound to preſent by act of parliament; as tipling or drunkenneſs by the ſtatute of 4 *J.* *c.* 5. recuſants by 3 *J.* *c.* 4.

4. They may preſent as often as they pleaſe, but ſhall not be obliged above once a year where it hath ſo been uſed, and not above twice any where, except it be at the biſhop's viſitation. *Can.* 116, 117. When to preſent.

5. For the preſentments of any church or chapel for one year, the regiſter ſhall have only 4*d.* *Can.* 116. Fee for taking-in preſentments.

6. The miniſter may preſent where the churchwardens neglect. *Can.* 113. But ſuch preſentment ought to be upon oath. 2 *Ventr.* 42. Miniſter may preſent.

7. In larger pariſhes, there are officers called ſideſmen (anciently ſynodſmen, otherwiſe called queſtmen) to aſſiſt the churchwardens in their enquiries and preſentment of offenders: They ſhall be choſen yearly in *Eaſter* week by the miniſter and pariſhioners, if they can agree; if not, by the biſhop. *Can.* 90. Sideſmen.

8. The ſideſman's oath, ſaid to have been agreed on by the civilians and common lawyers, is this: Sideſman's oath.

"You ſhall ſwear, that you will be aſſiſtant to the churchwar-
"dens in the execution of their office, ſo far as by law you are
"bound: So help you god." *Cod.* 242.

9. Whereas churchwardens are ſworn, and miniſters charged, to preſent as well crimes and diſorders, as alſo the common fame which is ſpread abroad of them, whereby they are ſometimes troubled by the delinquents or their friends; all judges both eccleſiaſtical and temporal are (by the 115th canon) admoniſhed and exhorted, as they regard and reverence the fearful judgment ſeat of the higheſt judge, that they admit not in any of their courts any ſuit againſt churchwardens or miniſters for any ſuch preſentments; conſidering that they tend to the reſtraint of ſhameleſs impiety, and that the rules of charity and government do preſume that they did nothing therein of malice, but for the diſcharge of their conſciences. Preſentment on common fame.

But as common fame is often falſe, and as it is better that ten offenders ſhould eſcape than one innocent perſon ſuffer, and as the above canon ſuppoſes that an action may be brought for ſuch preſentment; it ſeemeth good to uſe caution in this matter, unleſs the offence be very notorious.

VII. Their accounting.

1. At the end of the year, or within a month after at moſt, they ſhall before the miniſter and pariſhioners (at a veſtry) give up a juſt account of ſuch money as they have received, and alſo what particularly they have beſtowed in reparations, and otherwiſe, for the uſe of the church; and ſhall deliver up to the pariſhioners the money and pariſh goods in their hands, to be delivered over by them to the next churchwardens by bill indented. *Can.* 89. When to account.

2. And if they refuſe, they may be preſented at the next viſitation by the new churchwardens; or any of the pariſh that are intereſted How compelled to account.

intereſted may by proceſs call them to account before the ordinary; or the ſucceeding churchwardens may have a writ of account at common law. And if they have diſburſed more than they have received, the ſucceeding churchwardens ſhall pay what is due to them, and account it among their diſburſements. 1 *Roll's Abr.* 121.

Accounting to a ſelect veſtry.

3. If the cuſtom of the pariſh is, for a certain number of perſons to have the government thereof, and the account is given up to them; the cuſtom is a good cuſtom, and the account given to them a good account. *Cod.* 242.

Vouchers.

4. Mr. *Barlow* ſays, that for diſburſements of any ſum not above 40*s.* their own oath is held ſufficient proof; but for all ſums above, receipts muſt be produced. *Barl.* 105. But it may be more ſatisfactory if receipts be produced for all.

Allowance of the account.

5. The allowance of the account may be by entring it in the church book of accounts, and having it ſigned by thoſe in the veſtry who allow the accounts. *Barl.* 105.

Account allowed, final.

6. When they have faithfully accounted, and their acount is allowed by the miniſter and major part of the pariſhioners preſent, it ſhall not afterwards be in the power of any to make them account again; unleſs ſome fraud in their account is afterwards diſcovered. *Wood* 157.

E. 7 *G.* 2. *Wainwright* and *Bagſhaw.* The churchwardens were cited into the court of *Litchfield* to account. They pleaded, that they had accounted at the veſtry according to law. Which plea was rejected; and thereupon a prohibition was granted: for the ordinary is not to take the account, he can only give a judgment that they do account; and to what purpoſe ſhould they be ſent back, to thoſe who have taken their accounts already. *Str.* 974, 1133.

VIII. Their puniſhment on miſbehaviour.

Churchwardens committing waſte.

1. If the churchwardens waſte the goods of the church, the new churchwardens may call them to an account before the biſhop, or bring their action at common law. *Read. Ch. Service.*

Pariſhioners may be evidence againſt them.

2. And whereas many churchwardens and overſeers, and other perſons intruſted to receive collections for the poor, and other publick monies relating to the churches and pariſhes whereunto they belong, do often miſpend the ſame, to the prejudices of ſuch pariſhes, and of the poor, and other inhabitants thereof; and the pariſhioners, who are the only perſons ſometimes who can make proof thereof, have not been allowed to be witneſſes againſt them: it is enacted, that in all actions to be brought in any court at *Weſtminſter*, or at the aſſizes, for the recovery thereof, the evidence of the pariſhioners, other than ſuch as receive alms, ſhall be taken and admitted. 3 *W. c.* 11. *ſ.* 12.

Not anſwerable for indiſcretion.

3. But churchwardens are not anſwerable for indiſcretion, but for deceit only, if they lay out more money than is needful. *Wood* 154.

IX. Their indemnity on doing their duty.

If an action be brought againſt any churchwardens, or perſons called ſworn men, executing the office of churchwarden, for any thing done by virtue of their office, they may plead the general iſſue, and give the ſpecial matter in evidence; and if a verdict is given for them, or the plaintiff ſhall be nonſuit, or diſcontinue, they ſhall have double coſts. 7 *J.* *c.* 5. 21 *J.* *c.* 12. Double coſts.

In *Kercheval*'s caſe, *M.* 8 *Car.* An action was brought againſt the churchwardens for a preſentment upon common fame of incontinency. Upon not guilty, it was found for the churchwardens, and moved that they might have double coſts: But it was reſolved, that this being merely eccleſiaſtical, is not within this ſtatute; for that the ſtatute was never intended, but where they ſhall be vexed concerning temporal matters, which they ſhall do by virtue of their office, and not for preſentments concerning matters of fame. *Cro. Car.* 285, 286.

Clergy.

I. Clergymen.
II. Benefit of clergy.

I. Clergymen.

1. BY the 43 *El.* *c.* 2. Clergymen are liable to the poor rates, for their glebe and tithe. Liable to the poor.

2. And Mr. *Hawkins* ſays, clergymen are within the purview of the ſtatutes relating to the repair of highways, in reſpect of their ſpiritual poſſeſſions, as much as any other perſons whatſoever in reſpect of any other poſſeſſions; for the words are general, and there is no kind of intimation in the ſaid ſtatutes that any particular perſons ſhall be exempted more than others. 1 *Haw.* 204. And to the highways.

3. And it ſeems to be now generally ſettled, that clergymen are liable to all publick charges impoſed by act of parliament, where they are not ſpecially excepted. And to other publick charges.

4. No clergyman ſhall take to farm any lands (except he have not ſufficient glebe for the expences of his houſhold); on pain of 10*l.* a month, half to the king, and half to him that ſhall ſue: and the leaſes or contracts ſhall be void. 21 *H.* 8. *c.* 13. Shall not farm.

5. No clergyman ſhall buy to ſell again any cattle, corn, fiſh, wool, wood, victual, or any manner of merchandize; on pain of treble value, half to the king, and half to him that ſhall ſue: and the contract ſhall be void. 21 *H.* 8. *c.* 13. Shall not buy to ſell again.

6. No

Shall not keep a tanhouſe or brewhouſe.

6. No clergyman ſhall keep any tanhouſe, or any brewhouſe but for his own houſe; on pain of 10*l.* a month, half to the king, and half to him that ſhall ſue. 21 *H.* 8. *c.* 13.

May be impriſoned for incontinency.

7. The ordinary may puniſh clergymen for incontinency, by committing them to ward or priſon by his diſcretion. 1 *H.* 7. *c.* 4.

Privilege againſt an aſſault.

8. A perſon, laying violent hands on a clergyman, may be puniſhed in the eccleſiaſtical court. 13 *Ed.* 1. *Circumſpecte agatis.* 9 *Ed.* 3. *ſt.* 1. *c.* 3. 2 *Inſt.* 492.

May have the benefit of clergy more than once.

9. Clergymen in holy orders may have the benefit of clergy a ſecond, or third time, or oftner. 2 *H. H.* 374, 375.

Shall not be burnt in the hand.

10. A clerk in holy orders ſhall not be burned in the hand, but ſhall have the ſame privilege as if he had been burned in the hand; and therefore ſhall not be drawn in queſtion in the eccleſiaſtical court to deprive him, or inflict any eccleſiaſtical cenſure upon him. 2 *H. H.* 389.

Shall not ſerve temporal offices.

11. To the intent that clergymen may the better diſcharge their duty in celebration of divine ſervice, and not be intangled with temporal buſineſs; if any of them be choſen to any temporal office, he may have his writ to be diſcharged. 1 *Inſt.* 96.

Shall not ſerve in war.

12. Eccleſiaſtical perſons have this privilege, that they ought not in perſon to ſerve in war. 2 *Inſt.* 4.

Need not appear at the torn.

13. Eccleſiaſtical perſons are not bound to appear at the torn, or view of frankpledge. 52 *H.* 3. *c.* 10. 9 *Ed.* 2. *c.* 3. 2 *Inſt.* 4.

Shall not be arreſted in the church.

14. No clergyman ſhall be arreſted in any church or church yard, whilſt he attends to divine ſervice; on pain of impriſonment of the offender, and ranſom at the king's will, and gree to the party arreſted. 50 *Ed.* 3. *c.* 5. 1 *R.* 2. *c.* 15.

But the arreſt notwithſtanding (if not on a *Sunday*) is good in law. *Watſon* 636.

Shall not be taken on a ſtatute ſtaple. Nor on a capias.

15. The body of a clergyman may not be taken by force of any proceſs upon a ſtatute ſtaple, or ſtatute merchant. 2 *Inſt.* 4.

16. If an action of treſpaſs, debt, account, or other action wherein proceſs of *capias* lies, be brought againſt a clerk in holy orders, and the ſheriff return that he is a clergyman beneficed, having no lay fee in which he may be ſummoned, in this caſe the plaintiff cannot have a *capias* to arreſt his body, but a writ to the biſhop to compel him to appear. 13 *Ed.* 1. *c.* 45. 2 *Inſt.* 4. *Degge* 157.

Sheriff ſhall not levy on his eccleſiaſtical goods.

17. If a perſon be bound in recognizance in the chancery, or in any other court, and he pay not the ſum at the day; by the common law, if the perſon had nothing but eccleſiaſtical goods, the recognizee could not have a *levari facias* to the ſheriff to levy the ſame of theſe goods, but the writ ought to be directed to the biſhop to levy the ſame of his eccleſiaſtical goods. 2 *Inſt.* 4.

Shall not be amerced of his ſpiritual goods.

18. A clergyman ſhall be amerced only according to his lay tenement, and not after the quantity of his ſpiritual benefice. *Magn. Chart. c.* 14. *Cod.* 15.

Diſtreſs not to be made on his ſpiritual inheritance.

19. Diſtreſſes ſhall not be taken by ſheriffs, or other of the king's miniſters, in the inheritance of the church, wherewith it was anciently endowed; but otherwiſe it is of late purchaſe. 9 *Ed.* 2. *c.* 9. 2 *Inſt.* 4. *Cod.* 18.

20. A clergyman is not bound to pay tolls or other like cuſtoms, for his eccleſiaſtical goods; and if he be moleſted therefore, he may have a writ for his diſcharge. 2 *Inſt.* 4. *Cod.* 21. Shall not pay toll of his ſpiritual goods.

And this not only for all the goods and merchandizes of clergymen gotten upon their church livings, but alſo for all goods and merchandizes by them bought, to be ſpent upon their rectories and church livings. *Degge* 153.

21. Lord *Coke*, in his readings on the *Magna Charta*, ſays thus; "True it is, that eccleſiaſtical perſons have more and greater "liberties than other of the king's ſubjects, wherein to ſet down "all would take up a whole volume of itſelf, and to ſet down no "example, agreeth not with the office of an expoſitor; therefore "ſome few examples ſhall be expreſſed, and the ſtudious reader "left to obſerve the reſt as he ſhall read them in our books, and "other authorities of law." And the inſtances he gives, are chiefly thoſe which are mentioned above; nevertheleſs I do not find any author ſince his time, who hath ſaid what are thoſe other many and great privileges of the clergy; but the authors do generally adhere to theſe particular inſtances, probably as being ſupported by ſo great an authority: Other privileges have been aboliſhed, ſince his time, by acts of parliament, and the adjudications of the temporal courts; and others perhaps loſt by diſuſe; and poſſibly ſome of the inſtances above mentioned would have been gone likewiſe, or not looked upon as of ſo much authority, if they had not been vouched by Lord *Coke*. Obſervation.

II. Benefit of clergy.

I. Original of the benefit of clergy.
II. By what perſons it may be demanded.
III. In what caſes it may be demanded.
IV. At what time it muſt be demanded.
V. Effect of clergy allowed.

I. Original of the benefit of clergy.

ANciently princes and ſtates, converted to chriſtianity, in favour of the clergy, and for their encouragement in their offices and employments, and that they might not be ſo much intangled in ſuits, did grant to the clergy very bountiful privileges and exemptions; and particularly, an exemption of their perſons from criminal proceedings, in ſome capital caſes before ſecular judges; which was the true original of the benefit of clergy. Original of the benefit of clergy.

The clergy increaſing in wealth, power, honour, number, and intereſt, afterwards ſet up for themſelves; and that which they obtained by the favour of princes and ſtates at firſt, they now began to claim as their right, and a right of the higheſt nature, namely, by the law of god; and by their canons and conſtitutions endeavoured, and in ſome places obtained, vaſt extenſions of theſe exemptions, both with regard to the perſons concerned, to wit, not only

only to perſons in holy orders, but alſo to all that had any kind of ſubordinate miniſtration relative to the church; and likewiſe in reſpect of the cauſes, exempting as far as they could all cauſes of clergymen, as well civil as criminal, from the juriſdiction of the ſecular power, and wholly ſubordinating them immediately and only to the eccleſiaſtical juriſdiction, which they ſuppoſed to be lodged firſt in the pope by divine right and inveſtiture from Chriſt, and from the pope ſhed abroad into all ſubordinate and eccleſiaſtical juriſdiction.

And by this means they endeavoured, and in ſome kingdoms and for ſome ages obtained, that there was a double ſupreme power in every kingdom; the one eccleſiaſtical, abſolute, and independent upon any but the pope, over eccleſiaſtical men and cauſes; and the other ſecular, of the king, or civil magiſtrate.

But this claim of exemption, altho' it obtained much in this kingdom, yet grew ſo burdenſome, that it was from time to time qualified and abridged by the civil power, ſometimes by acts of parliament taking it away in ſome caſes, ſometimes by the interpretation and conſtruction of the judges, and ſometimes by the contrary uſage of the kingdom: for eccleſiaſtical canons never bound in *England*, farther than they were received, and ſo had not their authority from their own ſtrength and obligation, but from the uſages and cuſtoms of the kingdom that admitted them, and only ſo far forth as they were ſo admitted.

And therefore if they were indicted in caſes criminal, but not capital, nor wherein they were to loſe life or limb, there the privilege of clergy was not allowed; and therefore not in indictments of treſpaſs or petit larceny.

Alſo it was not allowed them in high treaſon.

But, at the common law, in all caſes of felony or petit treaſon, clergy was allowable, excepting two, *inſidiatores viarum, & arſon.* 2 *H. H.* 323—330.

Who may demand it.

II. By what perſons it may be demanded.

Others beſides clergymen.

1. By a favourable interpretation of the ſtatutes relating to the benefit of clergy, not only thoſe actually admitted into ſome inferior order of the clergy, but alſo thoſe who were never qualified to be admitted into orders (which was formerly tried by putting them to read a verſe) have been taken to have a right to this privilege, as much as perſons in holy orders. 2 *Haw.* 338.

Women.

2. But by the common law, a woman could not have the benefit of clergy: but now by the ſtatute of 3 *W.* *c.* 9. a woman convicted or outlawed for any felony, for which a man might have his clergy, ſhall upon praying the benefit of that ſtatute, be ſubject only to ſuch puniſhment as a man would be in the like caſe.

Hereticks, Jews, Turks, perſons excommunicate.

3. A perſon convicted of hereſy, a Jew, or a Turk, ſhall not have their clergy; but a perſon excommunicate ſhall have his clergy. 2 *H. H.* 373.

4. Alſo

4. Alſo every perſon (not being within orders) who hath been once admitted to his clergy, ſhall not be admitted to the ſame a ſecond time. 4 *H.* 7. *c.* 13. Perſons having had clergy once.

5. And if he is convicted of murder, he ſhall be marked (unleſs he is a peer, 2 *H. H.* 376.) with an M, on the brawn of the left thumb; and if for any other felony, with a T. 4 *H.* 7. *c.* 13. Burning in the hand.

6. But he ſhall not be ouſted of his clergy, by the bare mark in his hand, or by a parol averment, without the record teſtifying it, or a tranſcript thereof, according to the following ſtatutes. 2 *H. H.* 373. Burning not a concluſive proof of the conviction.

7. By 34 & 35 *H.* 8. *c.* 14. The clerk of the crown, or of the peace, or of aſſize, ſhall certify a tranſcript briefly of the tenor of the indictment, outlawry, or conviction, and attainder, into the king's bench in 40 days: And the clerk of the crown, when the judges of aſſize, or juſtices of the peace write to him for the names of ſuch perſons, ſhall certify the ſame with the cauſes of the conviction or attainder. Conviction how to be certified.

8. Another method is given by the 3 *W.* *c.* 9. which enacts, that the clerk of the crown, clerk of the peace, or clerk of aſſize, where a perſon admitted to clergy ſhall be convicted, ſhall at the requeſt of the proſecutor, or any other on the king's behalf, certify a tranſcript briefly and in few words, containing the effect and tenor of the indictment and conviction, of his having the benefit of clergy, and the addition of the party, and the certainty of the felony and conviction, to the judges where ſuch perſon ſhall be indicted for any ſubſequent offence *ſ.* 7. How it may be otherwiſe certified.

9. Alſo it ſeems, that if the party deny that he is the ſame perſon, iſſue muſt be joined upon it, and it muſt be found upon trial that he is the ſame perſon, before he can be ouſted of clergy. 2 *H. H.* 373. How tried whether he is the ſame perſon.

III. In what caſes it may be demanded.

1. By the 25 *Ed.* 3. *ſt.* 3. *c.* 4. All manner of clerks, who ſhall be convicted before the ſecular judges, for any treaſons or felonies, touching other perſons than the king himſelf, ſhall have the privilege of holy church. Formerly allowed in all felonies.

2. Clergy was never allowed in this nation, in caſes of high treaſon, nor is it allowed on indictments of petit larceny or treſpaſs; but by the above recited act, clergy was allowed in all treaſons and felonies, except treaſon againſt the king: So that after this ſtatute, the benefit of clergy might be pleaded and allowed in all other treaſons and felonies. *Hale's Pl.* 230. 2 *H. H.* 326. But not in treaſon or petit larceny.

3. Conſequently, wherever clergy is not allowable in any other caſes, it is taken away by ſome ſubſequent act of parliament. *Hale's Pl.* 230. Clergy taken away by ſtatutes.

4. Conſequently, where a new felony is made by an act of parliament, clergy is to be allowed, unleſs expreſsly taken away by ſuch ſtatute. *Hale's Pl.* 230. Allowed in new felonies, unleſs expreſsly taken away.

And if it maketh a new felony, and takes away clergy not generally, but in ſuch or ſuch caſes, regularly in other caſes, clergy is allowable; as if it take away clergy in caſe the party be convicted

victed by verdict, yet he ſhall have his clergy, if he ſtand mute. 2 *H. H.* 335.

But this is in part remedied by the 3 *W. c.* 9. which enacts, that if any perſon be *indicted* of any offence, for which by virtue of any *former* ſtatute he is excluded from clergy, if he had been convicted by verdict or confeſſion; if he ſtand mute, or will not anſwer directly, or challenge peremptorily above 20 of the jury, or be outlawed, he ſhall not be admitted to his clergy. *ſ.* 2. But this extends not to *appeals*, nor to offences made felonies by ſubſequent ſtatutes. 2 *Haw.* 348.

But if the ſtatute enacts generally, that it ſhall be felony without benefit of clergy, or that he ſhall ſuffer as in caſe of felony without benefit of clergy, this excludes it in all circumſtances, and to all intents. 2 *H. H.* 335.

Therefore where clergy is excluded, the indictment muſt bring the offence within the ſtatute.

5. It follows further, from what hath been ſaid, that in all caſes where an act of parliament ouſteth clergy, in caſe of any felony, the indictment muſt preciſely bring the party within the caſe of the ſtatute; otherwiſe, altho' poſſibly the fact itſelf be within the ſtatute, and it may ſo appear upon the evidence, yet if it be not ſo alledged in the indictment, the party, tho' convict, ſhall have his clergy. 2 *H. H.* 336.

But altho' the caſe be ſo laid in the indictment, that it comes within the ſtatute, to exempt the priſoner from clergy, yet if upon the evidence it fall out, that tho' it be a felony, yet it is not ſo qualified as laid in the indictment, the jury ought to find him guilty of the felony ſimply, but not as to the manner laid in the indictment, and thereupon the priſoner ſhall be admitted to his clergy; and this is commonly done. 2 *H. H.* 336.

Indictment on a ſtatute which ouſteth of clergy an offence which was felony at common law.

6. But if the offence was capital at the common law, and a ſtatute only excludes it from clergy; the indictment in ſuch caſe need not conclude *againſt the form of the ſtatute*, becauſe the ſtatute doth not alter the nature of the offence, but leaves it to its proper judgment, and only takes away a perſonal privilege of exemption from ſuch judgment. 2 *Haw.* 342.

Acceſſary.

7. Furthermore, from what hath been obſerved above, it follows, that where an act taketh away clergy from the principal, and ſaith nothing of the acceſſary; the acceſſaries as well before, as after, ſhall have their clergy. 11 *Co.* 37. *Poulter's caſe.*

IV. At what time it muſt be demanded.

To be demanded after conviction.

1. By the ancient common law, the benefit of clergy was demanded, as ſoon as the priſoner was brought to the bar, before any indictment or other proceeding againſt him; but this was found a great inconvenience to the priſoner, becauſe poſſibly he might have been acquitted of the felony; or if not, yet in caſe of an inqueſt of office, he loſt his challenges to ſuch inqueſt, and yet upon ſuch inqueſt found, he forfeited his goods, and the profits of his lands; and therefore *Priſot* Ch. J. with the advice of the other judges, in the reign of *H.* 6. for the ſafety of the innocent, would not allow the priſoner the benefit of clergy before he had pleaded to the felony, and (having the benefit of his chal-

lenges

lenges and other advantages) had been convicted thereof: which courſe hath been generally obſerved ever ſince. 2 *Inſt.* 164. 2 *H. H* 378.

2. And this benefit of clergy may be allowed by the court in diſcretion, tho' the party challenge it not. *Hale's Pl.* 239. May be allowed tho' not demanded.

V. Effect of clergy allowed.

1. Perſons admitted to their clergy, may be continued in priſon as a further puniſhment, not exceeding one year. 18 *El. c.* 7. Perſons having their clergy may be continued in gaol.

2. And by 4 *G. c.* 11. Perſons convicted of offences within benefit of clergy (except receivers and buyers of ſtolen goods) may, inſtead of being whipped and burnt in the hand, be tranſported for ſeven years. May be tranſported.

3. A perſon admitted to his clergy, forfeits all his goods that he hath at the time of the conviction. 2 *H. H.* 388. Shall forfeit their goods.

4. But preſently upon his burning in the hand, he ought to be reſtored to the poſſeſſion of his lands, and from thenceforth to enjoy the profits thereof. 2 *H. H.* 388. But not lands.

5. Alſo, it reſtores him to his credit; and conſequently enables him to be a good witneſs. 2 *Haw.* 364. Credit reſtored.

6. And it is holden that after a man is admitted to his clergy, it is actionable to call him felon; becauſe his offence being pardoned by the ſtatute, all the infamy and other conſequences of it are diſcharged. 2 *Haw.* 365. Actionable to call him felon.

Clerk of the peace.

1. THE *cuſtos rotulorum* ſhall appoint an able and ſufficient perſon, reſiding in the county or diviſion, to execute the office of clerk of the peace, by himſelf or his ſufficient deputy (to be allowed of by the ſaid *cuſtos rotulorum*, 37 *H.* 8. *c.* 1.); and to take and receive the fees, profits, and perquiſites thereof, for ſo long time only as ſuch clerk of the peace ſhall well demean himſelf in his ſaid office. 1 *W. c.* 21. *ſ.* 5. Who ſhall appoint.

2. But the *cuſtos rotulorum* ſhall not ſell the place of clerk of the peace, or take any bond or other aſſurance, to receive any reward, fee, or profit, directly or indirectly, to him or to any other perſon for ſuch appointment; on pain that ſuch *cuſtos rotulorum* ſelling, and ſuch clerk of the peace buying, ſhall be diſabled to hold their reſpective places, and ſhall each forfeit double value of the thing given, to him who ſhall ſue. 1 *W. c.* 21. *ſ.* 8. Office not to be ſold.

3. And every clerk of the peace, before he enters upon the execution of his office, ſhall in open ſeſſions take the oath following; Oath.

" I *A. B.* do ſwear, that I have not, nor will pay any ſum or " ſums of money, or other reward whatſoever, nor given any

" bond or other aſſurance to pay any money, fee, or profit, di-
" rectly or indirectly, to any perſon or perſons whomſoever,
" for ſuch nomination and appointment: So help me god."
1 *W.* *c.* 21. *ſ.* 8.

Qualifying.

4. He ſhall moreover take the oaths of allegiance, ſupremacy, and abjuration, in the ſame manner as other perſons who qualify for offices.

Not to act as ſolicitor.

5. No clerk of the peace, or his deputy, ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at any general or quarter ſeſſions, where he ſhall execute the office of clerk of the peace or deputy; on pain of 50*l.* to him who ſhall ſue in 12 months, with treble coſts. 22 *G.* 2. *c.* 46. *ſ.* 14.

Shall certify outlawries.

6. The clerk of the peace ſhall certify into the king's bench, the names of ſuch as be outlawed, attainted, or convicted of felony. 34 & 35 *H.* 8. *c.* 14.

Shall deliver eſtreats to the ſheriff.

7. He ſhall deliver to the ſheriff, within ten days after *Sep.* 29. yearly, a perfect eſtreat or ſchedule of all fines, and other forfeitures in ſeſſions. 22 & 23 *C.* 2. *c.* 22. *ſ.* 7.

Shall deliver eſtreats into the exchequer.

8. And ſhall alſo yearly, on or before the ſecond *Monday* after the morrow of all ſouls, deliver into the court of exchequer a perfect duplicate, certificate, and eſtreat of all ſuch eſtreats and ſchedules delivered to the ſheriffs; on pain of 50*l.* half to the king, and half to him that ſhall ſue. 22 & 23 *C.* 2. *c.* 22. *ſ.* 8. And moreover he may be amerced for the ſame, by the barons of the exchequer. 3 *G.* *c.* 15.

Upon oath.

9. And he ſhall, upon delivery of the ſaid eſtreats into the court of exchequer, take the following oath, to be adminiſtred by one of the barons;

" You ſhall ſwear, that theſe eſtreats, now by you delivered,
" are truly and carefully made up and examined, and that all fines,
" iſſues, amerciaments, recognizances, and forfeitures, which were
" ſet, loſt, impoſed, or forfeited, and in right and due courſe of
" law ought to be eſtreated in the court of exchequer, are, to
" the beſt of your knowledge and underſtanding, therein con-
" tained; and that in the ſame eſtreats are alſo contained and ex-
" preſſed, all ſuch fines as have been paid into the court, from
" which the ſaid eſtreats are made, without any wilful or fraudu-
" lent diſcharge, omiſſion, miſnomer, or defect whatſoever."
4 & 5 *W.* *c.* 24. *ſ.* 5.

Penalty of concealing fines.

10. And if he ſhall ſpare, take off, diſcharge, or conceal any ſuch fine or forfeiture, unleſs it be by rule of court, he ſhall forfeit treble value, half to the king, and half to him that ſhall ſue; and ſhall alſo forfeit his office, and be incapable to be employed in any office where the revenue is concerned. 22 & 23 *C.* 2. *c.* 22. *ſ.* 9.

Fees.

11. The clerk of the peace is not bound to enter judgment, or the like, at the ſuit of any, without having the fee due for the ſame; but if the court order any thing without ſuit of another, to wit, *ex officio*, there he ought to enter the ſame without any fee having for the entring thereof. *Crom.* 159.

Alſo

Alſo Mr. *Crompton* ſays, he ſhall have for every recognizance of the peace taken in court 2*s.* and for every releaſe of the peace there 2*s.* and for proceſs awarded againſt any to find ſurety of the peace 2*s.* *Crom.* 160.

And by 10 & 11 *W.* *c.* 23. he ſhall have only 2*s.* for drawing an indictment of felony; and if it is defective, he ſhall draw a new one *gratis*, on pain of 5*l.* with full coſts, to him that ſhall ſue. *ſ.* 7, 8.

His fees alſo in divers other caſes are ſpecially limited by act of parliament; and it ſeemeth to be one of the *deſiderata* in the juſtices law, that the clerk of the peace his fees are not aſcertained in all inſtances, even as thoſe of the other clerks to juſtices of the peace by the ſtatute of the 26 *G.* 2. *c.* 14. And withal it might be requiſite to inſert in the table to be agreed on for that purpoſe, by whom the ſame ſhall be paid in the ſeveral inſtances reſpectively, and what ſhall be the courſe of recovering the ſame on non payment.

12. If any clerk of the peace ſhall miſdemean himſelf in the execution of his office, and thereupon a complaint and charge in writing of ſuch miſdemeanor ſhall be exhibited againſt him, to the juſtices in ſeſſions, the ſaid juſtices may, on examination and due proof thereof openly in the ſaid ſeſſions, ſuſpend or diſcharge him from the ſaid office; and in ſuch caſe, the *cuſtos rotulorum* ſhall appoint another able and ſufficient perſon, reſiding in the ſaid county or diviſion, to be clerk of the peace. And in caſe of refuſal or neglect to make ſuch appointment, before the next general quarter ſeſſions, the juſtices in ſeſſions may appoint one. 1 *W.* *c.* 21. *ſ.* 6. May be diſplaced for miſbehaviour.

His duty in other matters is interſperſed where it falls in amongſt the other titles of this book.

Clipping money. See Coin.

Clockmaking. See Servants.

Cloth and clothiers. See Woollen manufactures.

Coaches and chairs. See Exciſe and hackney coaches.

Coals and Coalpits.

1. BY the 10 *G.* 2. *c.* 32. (which by 24 *G.* 2. *c.* 57. is continued to *Sep.* 1. 1757, *&c.*) If any perſon ſhall wilfully and maliciouſly ſet on fire any mine, pit, or delph of coal or cannel coal; he ſhall be guilty of felony without benefit of clergy. Setting on fire.

Drowning.

2. And by 13 *G.* 2. *c.* 21. If any perſon ſhall divert or convey any water into any coal work, with deſign to deſtroy or damage the ſame; he ſhall pay to the party grieved treble damages with coſts.

Meaſure, price and duty on coals.

3. There are many regulations by ſeveral ſtatutes, concerning the weights, meaſures, and prices of coals, eſpecially in and about *London*, and alſo concerning the duties thereupon, which not being of general concern, I ſhall but juſt mention the ſtatutes, referring thereunto thoſe who are more particularly concerned.

Statutes concerning the meaſures and prices of coals, and regulating the coal trade in general, are,

9 *H.* 5. *c.* 10.	3 *G.* 2. *c.* 26.
16 & 17 *C.* 2. *c.* 2.	4 *G.* 2. *c.* 30.
30 *C.* 2. *c.* 8.	11 *G.* 2. *c.* 15.
6 & 7 *W.* *c.* 10.	17 *G.* 2. *c.* 35.
9 *An.* *c.* 28.	19 *G.* 2. *c.* 35.
12 *An.* *ſt.* 2. *c.* 17.	23 *G.* 2. *c.* 26.

Statutes concerning the duties on coals;

1 *J.* 2. *c.* 15.	9 *An.* *c.* 23. *ſ.* 90.
6 & 7 *W.* *c.* 18.	12 *An.* *ſt.* 2. *c.* 9.
9 & 10 *W.* *c.* 13.	1 *G.* *ſt.* 2. *c.* 23.
10 & 11 *W.* *c.* 21.	5 *G.* *c.* 9.
8 *An.* *c.* 4.	22 *G.* 2. *c.* 37.
9 *An.* *c.* 6.	

Cocoa nuts. See Exciſe.

Coffee. See Exciſe.

Coin.

For matters common to this with other treaſons, ſee title **Treaſon.**

Original of the word.

1. COIN, in *French*, ſignifieth a corner, and from thence hath its name (according to Lord *Coke*); becauſe in ancient time money was ſquare with corners, as it is in ſome countries at this day. 1 *Inſt.* 207.

Others derive this word, which in the old *French* is written *coign*; as alſo the *Italian cunio*, and the *Spaniſh cuno*, from the *Greek* word κοινὸς, *communis*; becauſe money is the common mean or inſtrument of traffick.

But theſe derivations are too artificial. The word doth properly ſignify a wedge, as the *Latin cuneus*; and hath a verb belonging to it in the ſeveral languages: and is tranſlated to lawful money; either from the form of a wedge ingot or lingot *(linguetta)* in which bullion was tranſported from all antiquity; or

elſe from the inſtrument, a wedge or chiſſel, with which in trade, theſe lingots were occaſionally cut to the weight required, as they are at this day in the *Eaſt Indies*, with ſheers.

Value of coin.

2. The legitimation of money, and the giving it it's denominated value, is one ſpecial part of the king's prerogative. 1 *H. H.* 188.

Legitimating foreign coin.

3. And the king may by his proclamation legitimate foreign coin, and make it current money of this kingdom, according to the value impoſed by ſuch proclamation. 1 *H. H.* 192.

And therefore both *Engliſh* money, coined by the king's authority, and foreign coin made current by proclamation, are within the denomination of lawful money of *England*. 1 Inſt. 207.

Copper coin.

4. But only gold or ſilver coin, and not braſs or copper, are within this denomination. 1 *Haw.* 42.

And no perſon can be inforced to take in payment any money but of lawful metal, that is, of ſilver or gold. 2 *Inſt.* 577. Except for ſums under ſix pence. 1 *H. H.* 195.

Counterfeiting the coin of this realm.

5. By the ſtatute of 25 *Ed.* 3. *ſt.* 5. *c.* 2. it is made treaſon to counterfeit the coin of this realm: That is to ſay, whether the perſon utter it or not. 3 *Inſt.* 16. 1 *Haw.* 42.

Counterfeiting foreign current coin.

6. And if any perſon ſhall falſly forge and counterfeit any ſuch kind of coin of gold or ſilver, as is not the proper coin of this realm, and ſhall be current therein by the king's conſent; he, his counſellors, procurers, aiders and abettors, ſhall be guilty of high treaſon. 1 *Mar. Seſſ.* 2. *c.* 6.

Clipping, waſhing, filing.

7. By the 5 *El. c.* 11. Clipping, waſhing, rounding, or filing, for lucre or gain, any the proper coin of this realm or the dominions thereof, or of any other realm current within this realm by proclamation, ſhall be adjudged treaſon in the offenders, their counſellors, conſenters, and aiders.

Impairing, diminiſhing, falſifying.

8. And by the 18 *El. c.* 1. If any perſon ſhall, for lucre or gain, by any art, ways, or means, impair, diminiſh, falſify, ſcale, or lighten the proper coin of this realm, or any the dominions thereof, or the coin of this realm allowed to be current at the time of the offence committed, by the king's proclamation; he, his counſellors, conſenters, and aiders ſhall be guilty of treaſon.

Edging.

9. And if any perſon (not employed in the mint) ſhall mark on the edges any the current coin of this kingdom; or, if any perſon whatſoever ſhall mark on the edges any of the diminiſhed coin of this kingdom, or any counterfeit coin reſembling the coin of this kingdom, with letters or grainings, or other marks or figures like unto thoſe on the edges of money coined in the mint; he, his counſellors, procurers, aiders, and abettors ſhall be guilty of high treaſon. 8 & 9 *W. c.* 26. *ſ.* 3. Proſecution to be in ſix months. 1 *An. ſt.* 1. *c.* 9.

Colouring.

10. Alſo, if any perſon ſhall colour, gild, or caſe over with gold or ſilver, or with any waſh or materials producing the colour of gold or ſilver, any coin reſembling any the current coin of this kingdom, or any round blanks of baſe metal, or of coarſe gold or coarſe ſilver, of a fit ſize and figure to be coined into counterfeit milled money, reſembling any the gold or ſilver coin of this kingdom; or if any perſon ſhall gild over any ſilver blanks of a fit

ſize and figure to be coined into pieces reſembling the current gold coin of this kingdom; he, his counſellors, procurers, aiders, and abettors ſhall be guilty of high treaſon. 8 & 9 *W.* *c.* 26. *ſ.* 4. Proſecution to be in three months. *ſ.* 9.

And by the 15 & 16 *G.* 2. *c.* 28. If any perſon ſhall waſh, gild, or colour any lawful or counterfeit ſilver coin called a ſhilling or ſixpence, or add to or alter the impreſſion, or any part thereof, on either ſide, with intent to make ſuch ſhilling or ſixpence reſemble a guinea or half guinea; or ſhall any way alter or colour halfpenies or farthings, with intent to make them reſemble a ſhilling or ſixpence; he, his counſellors, aiders, and abettors ſhall be guilty of high treaſon. Proſecution to be in ſix months.

Counterfeiting halfpence and farthings.

11. Lord *Hale*, ſpeaking of copper halfpence and farthings, makes it a quæry, whether the counterfeiting of them be not treaſon within the ſtatute of 25 *Ed.* 3. but inclines to the negative. 1 *H. H.* 195, 211, 212.

And with this agrees the ſenſe of the legiſlature, in the ſtatute of 15 & 16 *G.* 2. *c.* 28. which reciting that whereas the counterfeiting of the copper coin of this kingdom is only a miſdemeanor, and the puniſhment often very ſmall, therefore enacteth, that if any perſon ſhall coin or counterfeit braſs or copper halfpence or farthings; he, his counſellors, aiders, and abettors, ſhall ſuffer two years impriſonment, and find ſureties for their good behaviour for two years more. *ſ.* 6.

Nevertheleſs, experience aſſureth that this penalty is ſtill far too ſmall; for ſince the making of this act, counterfeit halfpence have abounded even more than they did before, to the great injury of trade, and vexation of the people: inſomuch that I have known in a common country church a dozen or fourteen bad halfpence, good for nothing, collected upon a common charity brief; which, at the ſame rate throughout the kingdom, is 250*l* loſs to the petitioners. Nay even the act itſelf may poſſibly have tended to defeat its own good deſign; for hereby the offenders are aſſured (which before was in ſome ſort doubtful to them) that the crime is not treaſon nor felony.

Counterfeiting coin not current.

12. If any perſon ſhall falſly forge or counterfeit any ſuch kind of coin of gold or ſilver, as is not the proper coin of this realm, nor permitted to be current within this realm; he, his procurers, aiders, and abettors ſhall be guilty of miſpriſion of high treaſon. 14 *El.* *c.* 3.

Bringing in falſe money.

13. If any perſon ſhall bring falſe money into the realm, counterfeit to the money of *England*, knowing the ſame to be falſe, to merchandiſe or make payment, in deceit of the king and his people; he ſhall be guilty of high treaſon. 25 *Ed.* 3. *ſt.* 5. *c.* 2.

Alſo, if any perſon ſhall bring from the parts beyond the ſea, any forged and counterfeit money like to the gold or ſilver coin of foreign realms, current in payment within this realm by the king's ſufferance and conſent, knowing the ſame to be falſe and counterfeit, to the intent to utter or make payment of the ſame within this realm, by merchandizing or otherwiſe; he, his counſellors, procurers, aiders, and abettors ſhall be guilty of high treaſon. 1 & 2 *P. & M.* *c.* 11. *ſ.* 2.

Note;

Note; This muſt be brought from a foreign nation, and not from *Ireland*, or other place ſubject to the crown of *England*; becauſe the counterfeiting there, is puniſhable by the laws of our king, as much as in *England*. 1 *Hawk.* 43.

14. If any preſs for coinage, ſhall be found in the cuſtody of any perſon (other than the officers of the mint), it ſhall be ſeized for the king's uſe; and every perſon in whoſe cuſtody ſuch preſs ſhall be found, ſhall forfeit 500*l.* half to the king, and half to the informer. 7 & 8 *W.* *c.* 19. *ſ.* 4. Coining preſs and tools.

And by 8 & 9 *W.* *c.* 26. No perſon, unleſs employed in the mint, ſhall knowingly make or mend, or begin or proceed to make or mend, or aſſiſt in the making or mending of any puncheon, counter-puncheon, matrix, ſtamp, dye, pattern, or mould, of ſteel, iron, ſilver, or other metal, or of ſpaud, or fine founders earth, or ſand, or of any other materials whatſoever, in or upon which there ſhall be, or be made or impreſſed, or which will make or impreſs the figure, ſtamp, or reſemblance of both or either of the ſides or flats of any gold or ſilver coin, current within this kingdom; nor ſhall knowingly make or mend, or begin or proceed to make or mend, or aſſiſt in the making or mending of any edger or edging tool, inſtrument, or engine, not of common uſe in any trade, but contrived for making of money round the edges with letters, grainings, or other marks or figures reſembling thoſe on the edges of money coined in the mint; nor any preſs for coinage; nor any cutting engine for cutting round blanks by force of a ſcrew, out of flatted bars of gold, ſilver, or other metal; nor ſhall knowingly buy or ſell, hide or conceal, or without lawful authority or ſufficient excuſe for that purpoſe, knowingly have in his houſe, cuſtody, or poſſeſſion, any ſuch puncheon, counter-puncheon, matrix, ſtamp, dye, edger, cutting engine, or other tool or inſtrument before mentioned; on pain that ſuch perſon, his counſellors, procurers, aiders, and abettors, ſhall be guilty of high treaſon. *ſ.* 1. Proſecution to be in ſix months. 1 *An.* *ſt.* 1. *c.* 9. *ſ.* 2.

And if any perſon ſhall, without lawful authority, knowingly convey, or aſſiſt in conveying out of the mint, any puncheon, counter-puncheon, matrix, dye, ſtamp, edger, preſs, or other tool, engine, or inſtrument uſed for or about the coining of monies there, or any uſeful part of ſuch tool or inſtrument; he, his counſellors, procurers, aiders, or abettors, ſhall be guilty of high treaſon. 8 & 9 *W.* *c.* 26. *ſ.* 2. Proſecution to be in 3 months. *ſ.* 9.

And if any puncheon, dye, ſtamp, edger, cutting engine, preſs, flaſk, or other tool, inſtrument, or engine, uſed or deſigned for coining or counterfeiting gold or ſilver monies, or any part of ſuch tool or engine, ſhall be hid or concealed in any place, or found in the houſe, cuſtody, or poſſeſſion of any perſon not employed in the mint, nor having the ſame by ſome lawful authority; any perſon whatſoever diſcovering the ſame, may and ſhall ſeize the ſame, and carry them forthwith to ſome juſtice of the peace to be by him ſecured, to be produced in evidence againſt any perſon who ſhall be proſecuted for any ſuch offence. And

after they have been produced in evidence, they ſhall forthwith by order of the court (or by order and in the preſence of a juſtice of the peace, if there hath been no trial) be totally defaced and deſtroyed. 8 & 9 *W.* *c.* 26. *ſ.* 5.

Selling of clippings.

15. For the better preventing the clipping, diminiſhing, or impairing the current coin, if any perſon ſhall buy or ſell, and knowingly have in his cuſtody or poſſeſſion, any clippings or filings of the current coin of this kingdom; he ſhall forfeit the ſame, and alſo 500*l.* half to the king, and half to the informer; and ſhall be branded in the right cheek with the letter R; and be impriſoned till the payment of the 500*l.* 6 & 7 *W.* *c.* 17. *ſ.* 4.

Bullion.

16. And if any ſhall caſt ingots or bars of ſilver, in imitation of *Spaniſh* bars or ingots, or ſtamp them in likeneſs of the *Spaniſh* ſtamp, he ſhall forfeit the ſame, and alſo 500*l.* half to the king, and half to the informer. 6 & 7 *W.* *c.* 17. *ſ.* 2.

And if any broker, not being a trading goldſmith or refiner of ſilver, ſhall buy or ſell any bullion or molten ſilver, he ſhall be impriſoned ſix months. *ſ.* 7.

And two juſtices may ſearch (and with the help of a conſtable may break open houſes, trunks, or boxes, to ſearch) for bullion ſuſpected to be concealed; and if found, they ſhall ſeize the ſame, and the perſon in whoſe poſſeſſion it ſhall be found; and if ſuch perſon ſhall not prove by the oath of himſelf, or of a credible witneſs, that it is lawful ſilver, and was not current coin, nor clippings thereof, he ſhall be committed; and if on his trial he ſhall not prove the ſame by one witneſs, he ſhall be impriſoned ſix months. *ſ.* 8.

And no perſon ſhall ſhip any molten ſilver or bullion, without certificate from the court of the lord mayor and aldermen of *London*, and oath made before them by the owner and two witneſſes, that it is foreign bullion, and that no part of it was the coin of this realm, or clippings thereof, nor plate wrought within this kingdom; on pain of forfeiting the ſame, half to the king, and half to him who ſhall ſue. And the maſter or captain of a ſhip permitting the ſame, ſhall forfeit 200*l.* to him who ſhall ſue; and if it is a king's ſhip, he ſhall alſo forfeit his employment. Alſo any officer of the cuſtoms offending herein, ſhall forfeit 200*l.* and his office. And in caſe of ſeizure of ſuch bullion, or action brought for the forfeitures, the proof ſhall lie upon the owner; and for want of proof, it ſhall be forfeited. 7 & 8 *W.* *c.* 19. *ſ.* 8, 9.

And if any bullion is entred to be exported, other than in the name of the true owner, it ſhall be forfeited, half to the king, and half to him who ſhall ſeize or diſcover the ſame. 6 & 7 *W.* *c.* 17. *ſ.* 14.

Blanched copper and other baſe metal.

17. And whereas ſeveral mixtures of metals have been invented in imitation of gold and ſilver, and blanched copper is principally made uſe of in imitation of ſilver, and ſeldom, if ever, for any honeſt or good purpoſe, it is enacted, that if any perſon ſhall blanch copper for ſale, or mix blanched copper with ſilver, or knowingly buy or ſell or offer to ſale blanched copper alone, or mixed with ſilver; or ſhall knowingly and fraudulently buy

buy or ſell or offer to ſale any malleable compoſition or mixture of metals or minerals, which ſhall be heavier than ſilver, and look, and touch, and wear like ſtandard gold, but be manifeſtly worſe than ſtandard; he ſhall be guilty of felony, and ſhall ſuffer death as in caſe of felony. Proſecution to be in three months. 8 & 9 *W.* *c.* 26. *ſ.* 6, 9.

Paying coin under value.

18. If any perſon ſhall take, receive, pay, or put off any counterfeit milled money, or any milled money whatſoever unlawfully diminiſhed, and not cut in pieces, at or for a lower rate or value, than the ſame by its denomination doth or ſhall import, or was coined or counterfeited for; he ſhall be guilty of felony, and ſuffer death as in caſe of felony. Proſecution to be in three months. 8 & 9 *W.* *c.* 26. *ſ.* 6, 9.

Uttering falſe money.

19. If one perſon counterfeits, and by agreement before that counterfeiting, another perſon is to take off and vent the counterfeit money, ſuch other is an aider and abettor, and conſequently a principal traytor (for in high treaſon there are no acceſſaries). 1 *H. H.* 214.

If one perſon counterfeit, and another (knowing that he did ſo) puts it off, but without any ſuch previous agreement; ſuch other perſon ſeems to be all one with a receiver of him, becauſe he maintains him. 1 *H. H.* 214.

If one perſon counterfeit, and another perſon know that he did ſo, and doth neither receive, maintain, or abet him, but conceals his knowledge; this is miſpriſion of treaſon. 1 *H. H.* 214.

But, formerly, where it did not appear, that the utterer of counterfeit money knew who counterfeited it, but barely uttered it for his own benefit, altho' he knew it was counterfeit, yet it was only a cheat and miſdemeanor, puniſhable by fine and impriſonment (contrary to the opinion in *Stamford* and *Dalton*); but now, by the ſtatute of 15 *G.* 2. *c.* 28. it is enacted, that whereas the uttering falſe money is a crime frequently committed all over the kingdom, and the offenders are not deterred, becauſe it is only a miſdemeanor, and the puniſhment generally ſmall, tho' there is reaſon to believe that the utterers are often the coiners, or in confederacy with them; therefore, if any perſon ſhall tender in payment any counterfeit coin, knowing it to be ſo, he ſhall for the firſt offence ſuffer ſix months impriſonment, and find ſureties for his good behaviour for ſix months longer; for the ſecond offence, ſhall ſuffer two years impriſonment, and find ſureties for two years more; and for the third offence, ſhall be guilty of felony without benefit of clergy. *ſ.* 2.

And if any perſon ſhall tender in payment any counterfeit money (knowing it to be ſo), and ſhall either the ſame day, or within ten days after, knowingly tender other falſe money in payment, or at the time of ſuch tendering have more in his cuſtody; he ſhall for the firſt offence ſuffer a year's impriſonment, and find ſureties for his good behaviour for two years more; and for the ſecond offence, ſhall be guilty of felony without benefit of clergy. *ſ.* 3.

Perſons guilty of the ſaid crimes ſhall be tried and convicted in ſuch manner as is uſed againſt offenders for counterfeiting the coin: and the clerk of aſſize, or clerk of the peace, where the firſt conviction

viction was had, ſhall certify the ſame by a tranſcript in few words, containing the tenor of ſuch conviction (for which he ſhall have 2*s*. 6*d*.); and ſuch certificate being produced in court, ſhall be ſufficient proof of the former conviction. Proſecution to be in ſix months. *ſ*. 5, 9.

Note; By this it ſhould ſeem, that the juſtices of the peace in ſeſſions have power to try ſuch offenders; otherwiſe this direction to the clerk of the peace to certify the conviction is impertinent; for he is not the proper perſon to certify what is done in another court, where he is not neceſſarily ſuppoſed to be preſent: albeit no power is given to the ſeſſions by any expreſs words in this ſtatute to hear and determine ſuch offences.

Having falſe money in poſſeſſion.

20. If falſe or clipt money be found in a man's hands; if he be ſuſpicious, he may be arreſted till he have found his warrant. 3 *Inſt*. 18. *Hale's Pl*. 21. 1 *Hawk*. 43.

Falſe money what to be done with.

21. Any perſon to whom any ſilver money ſhall be tendred, any piece whereof ſhall be diminiſhed, otherwiſe than by reaſonable wearing, or that by the ſtamp, impreſſion, colour, or weight thereof, he ſhall ſuſpect to be counterfeit, may cut, break, or deface ſuch piece: and if any piece ſo cut, broken, or defaced ſhall appear to be counterfeit, the perſon tendring the ſame ſhall bear the loſs thereof; but if the ſame ſhall be of due weight, and appear to be lawful money, the perſon that cut, broke, or defaced the ſame, ſhall receive the ſame at the rate it was coined for. And if any queſtion ariſe, whether the piece ſo cut be counterfeit, it ſhall be determined by the next juſtice of the peace, or chief magiſtrate in a corporation. 9 & 10 *W*. *c*. 21. *ſ*. 1.

And if any counterfeit or unlawfully diminiſhed money ſhall be produced in any court of juſtice, either in evidence or otherwiſe, the judge ſhall cauſe it to be cut in pieces in open court, or in the preſence of a juſtice of the peace, and then to be delivered to or for the perſon to whom it belongs. 8 & 9 *W*. *c*. 26. *ſ*. 5.

Bail.

22. By the 3 *Ed*. 1. *c*. 15. Perſons taken for falſe money are not bailable by juſtices of the peace.

But they muſt take the examinations and informations, and bind over the witneſſes to the proper court, and commit the perſons accuſed. 1 *H*. *H*. 372.

Evidence.

23. It is not neceſſary there ſhould be two witneſſes in caſes of counterfeiting the coin, as it is in other high treaſons; but perſons may be convicted according to the courſe of the common law, by one witneſs only. 1 *H*. *H*. 318, 328.

Judgment.

24. The judgment for high treaſon, relating to the coin, is, to be drawn to the place of execution, and there hanged by the neck till he be dead. 2 *Hawk*. 444.

But it is generally provided by the ſeveral ſtatutes, that this ſhall work no corruption of blood, nor loſs of dower.

Excepted out of the general pardon.

25. The aboveſaid offences relating to the coin, are excepted out of the general pardon, of the 20 *G*. 2. *c*. 52.

Reward for convicting an offender.

26. Every perſon who ſhall apprehend any perſon who hath counterfeited any of the current [gold or ſilver] coin of this realm; or that for lucre or gain hath clipped, waſhed, filed, or any way diminiſhed the ſame; or hath altered ſhillings and ſixpences to

make

make them reſemble guineas and half guineas, or halfpenies and farthings to make them look like ſhillings and ſixpences; or ſhall bring or cauſe to be brought into this kingdom, any clipt, falſe, or counterfeit coin; and proſecute ſuch perſon to conviction: every ſuch perſon ſhall have a reward of 40 *l.* In order to which, the judge ſhall give him under his hand, a certificate certifying the conviction, and the county in which it was made, and that the offender was taken and proſecuted by ſuch perſon; and if any diſpute ſhall ariſe between ſeveral perſons apprehending and proſecuting, the judge ſhall in the certificate appoint the reward to be paid amongſt them. in ſuch proportion as he ſhall think reaſonable. The ſaid certificate to be tendred to the ſheriff, who ſhall thereupon pay the ſame without fee, within one month after ſuch tender and demand, on pain of forfeiting to the party double the ſum, with treble coſts. The ſheriff to be repaid out of the treaſury. 6 & 7 *W.* *c.* 17. *ſ.* 9, 10, 11. 15 & 16 *G.* 2. *c.* 28. *ſ.* 7.

In like manner a reward of 10 *l.* ſhall be paid, for apprehending and convicting a counterfeiter of the copper money. 15 & 16 *G.* 2. *c.* 28. *ſ.* 7.

Pardon to accomplices informing.

27. If any perſon, being out of priſon, ſhall be guilty of clipping, coining, counterfeiting, waſhing, filing, or otherwiſe diminiſhing the [gold or ſilver] coin of this realm, and afterwards diſcover two or more perſons who have committed any of the ſaid crimes, ſo as two or more be convicted; he ſhall have the king's pardon, and if he is an apprentice, he ſhall be made a freeman. 6 & 7 *W.* *c.* 17. *ſ.* 12.

In this clauſe at large in the ſtatute, is an inſtance of that multiplicity of words, which is ſometimes ridiculed in our laws; where it is ſaid, *two or more perſon or perſons*, and again, *two or more of the perſon or perſons.*

Further; If any perſon, being out of priſon, ſhall be guilty of altering ſixpences or ſhillings, to make them look like half guineas or guineas; or altering farthings or halfpenies, to make them look like ſixpences or ſhillings; or of counterfeiting braſs or copper halfpenies or farthings; or of uttering falſe money, ——— and afterwards diſcover two or more perſons who have committed any of the ſaid crimes, ſo as two be convicted; he ſhall have the king's pardon. 15 & 16 *G.* 2. *c.* 28. *ſ.* 8.

Charges of proſecuting.

28. The commiſſioners of the treaſury may iſſue a ſum not exceeding 600 *l.* yearly, for the charges and expences of the officers and others employed in the proſecution of offences in counterfeiting, diminiſhing, or otherwiſe concerning the current coins of this realm. 7 *An.* *c.* 24. *ſ.* 4. 15 & 16 *G.* 2. *c.* 28. *ſ.* 10.

Commitment.

Without warrant.

ANciently there were more felons committed to gaol without mittimus in writing, than were with it: ſuch were all the commitments by conſtables, watchmen, and private perſons arreſting for felony, and bringing to the common gaol, long before there were any juſtices of the peace; and yet mittimus's are not of ſo ancient date even as they. 1 *H. H.* 610.

But now, ſince the *habeas corpus* act, a commitment in writing ſeems more neceſſary than it was in former times; otherwiſe the priſoner may be admitted to bail upon that act, whatſoever his offence may have been.

Commitment, when.

When a ſtatute appoints impriſonment, but limits no time when, it is to be underſtood that he ſhall be impriſoned preſently. *Dalt. c.* 170.

Concerning which I will ſet forth,

I. Who may be committed.
II. To what place.
III. The form of the commitment.
IV. Charges of the commitment.
V. That the gaoler ſhall receive the priſoner.
VI. Shall certify the commitment.
VII. Commitment diſcharged.

I. Who may be committed.

Who may be committed:

Perſons not bailable, or not finding bail.

1. There is no doubt, but that perſons apprehended for offences which are not bailable, and alſo all perſons who neglect to offer bail for offences which are bailable, muſt be committed. 2 *Haw.* 116.

Perſons guilty of contempt.

2. And it is ſaid, that whereſoever a juſtice is impowered by any ſtatute to bind a perſon over, or to cauſe him to do a certain thing, and ſuch perſon being in his preſence ſhall refuſe to be bound, or to do ſuch thing, the juſtice may commit him to the gaol, to remain there till he ſhall comply. 2 *Haw.* 116.

Perſons charged with felony.

3. If a priſoner be brought before a juſtice, expreſly charged with felony upon oath, the juſtice cannot diſcharge him, but muſt bail or commit him. 2 *H. H.* 121.

Perſons charged on ſuſpicion.

4. But if he be charged with ſuſpicion only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony be in truth no felony in point of law, the juſtice may diſcharge him; as if a man be charged with felony for ſtealing a parcel of the freehold, or for carrying away what was delivered to him, and ſuch like, for which tho' there may be cauſe to bind him over as for a treſpaſs, the juſtice may diſcharge him as to felony, becauſe it is not felony. But if a man be killed by another,

another, tho' it be by misadventure, or self defence (which is not properly felony), or in making an assault upon a minister of justice in execution of his office (which is not at all felony), yet the justice ought not to discharge him, for he must undergo his trial for it; and therefore he must be committed, or at least bailed. 2 *H. H.* 121.

5. But commitment by the justices of the peace almost in all cases (except for the peace, good behaviour, felony, or higher offences) is but to retain the party till he hath made fine to the king; and therefore if he offer to pay it, or find sureties by recognizance to pay it, he ought not to be committed, but to be delivered presently. *Dalt. c.* 170. Persons not paying their fine.

II. To what place. To what place:

1. All felons shall be committed to the common gaol, and not elsewhere. 5 *H.* 4. *c.* 10. To the gaol.

2. But vagrants and other criminals, offenders, and persons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices in their judgment shall think proper. 6 *G. c.* 19. House of correction.

3. And they may commit other offenders to the stocks, or other custody, by particular statutes. Stocks.

4. Generally, if a man commit felony in one county, and be arrested for the same in another county, he shall be committed to gaol in that county where he is taken. *Dalt. c.* 170. Different county.

Yet if he escapes, and is taken on fresh suit, in another county, he may be carried back to the county where he was first taken. *Dalt. c.* 170.

Also by the 24 *G.* 2. *c.* 55. If a person is apprehended, upon a warrant indorsed, in another county, for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and be committed (or if bailable, bailed) by the justices in such first county.

III. Form of the commitment. Form:

1. It must be in writing, either in the name of the king, and only tested by the person who makes it, or it may be made by such person in his own name, expressing his office, or authority, and must be directed to the gaoler, or keeper of the prison. 2 *Haw.* 119. In whose name.

Yet the mention of the name and authority of the justice, in the beginning of the mittimus, is not always necessary, for the seal and subscription of the justice to the mittimus is sufficient warrant to the gaoler; for it may be supplied by avermont, that it was done by the justice. 2 *H. H.* 122.

2. It should contain the name and surname of the party committed, if known; if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his The party's name.

his hair, and the like, and to add that he refuſeth to tell his name. 1 *H. H.* 577.

Oath. 3. It is ſafe, but not neceſſary, to ſet forth, that the party is charged upon oath. 2 *Haw.* 120.

Cauſe. 4. It ought to contain the cauſe, as for treaſon, or felony, or ſuſpicion thereof; otherwiſe if it contain no cauſe at all, if the priſoner eſcape it is no offence at all; whereas if the mittimus contained the cauſe, the eſcape were treaſon or felony, tho' he were not guilty of the offence; and therefore for the king's benefit, and that the priſoner may be the more ſafely kept, the mittimus ought to contain the cauſe. 2 *Inſt.* 52.

And hereupon it appeareth, that a warrant or mittimus to anſwer to ſuch things as ſhall be objected againſt him, is utterly againſt law. 2 *Inſt.* 591.

Alſo, it ought to contain the certainty of the cauſe; and therefore if it be for felony, it ought not to be generally for felony, but it muſt contain the ſpecial nature of the felony briefly, as for felony *for the death of ſuch an one*, or for burglary *in breaking the houſe of ſuch an one*; and the reaſon is, becauſe it may appear to the judges of the king's bench, upon an *habeas corpus*, whether it be felony or not. 2 *H. H.* 122.

But the want hereof ſeems not to make the commitment abſolutely void, ſo as to ſubject the gaoler to a falſe impriſonment; but it lies in averment to excuſe the gaoler or officer, that the matter was for felony. 1 *H. H.* 584.

Concluſion. 5. It muſt have an apt concluſion; as if it is for felony, to detain him till he be thence delivered by law, or by order of law, or by due courſe of law. 2 *Haw.* 120. 2 *H. H.* 123.

But if the concluſion be irregular, it doth not ſeem to make the warrant void, but the law will reject that which is ſurpluſage, and the reſt ſhall ſtand; ſo that if the matter appear to be ſuch, for which he is to remain in cuſtody, or be bailed, he ſhall be bailed or committed as the caſe requires, and not diſcharged, but the wrong concluſion ſhall be rejected. 1 *H. H.* 584.

It is alſo to be obſerved, that a commitment grounded on an act of parliament, ought to be conformable to the method preſcribed by it. As where the overſeers were committed for refuſing to account, and the warrant concluded in the common form, until they be duly diſcharged according to law, upon the return of an *habeas corpus* the court held the commitment void, becauſe the warrant ought to have concluded, there to remain until he ſhall account, as the 43 *El. c.* 2. doth appoint. And a difference is, where a man is committed as a criminal, and where only for contumacy; in the firſt caſe, the commitment muſt be, until diſcharged according to law; but in the latter, until he comply. 2 *Haw. Not.* 33.

Where a ſtatute appoints impriſonment, but limits no time how long, in ſuch caſe the priſoner muſt remain at the diſcretion of the court. *Dalt. c.* 170.

Seal. 6. It muſt be under ſeal; and without this, the commitment is unlawful, the gaoler is liable to a falſe impriſonment, and the wil-

ful

ful eſcape by the gaoler, or breach of priſon by the felon, makes no felony. 1 *H. H.* 583.

But this muſt not be intended of a commitment by the ſeſſions, or other court of record; for there the record it ſelf, or the memorial thereof, which may at any time be entred of record, are a ſufficient warrant, without any warrant under ſeal. 1 *H. H.* 584.

7. It ſhould alſo ſet forth the place at which it is made. 2 *Haw.* 119. Place.

8. It muſt alſo have a certain date, of the year and day. 2 *H. H.* 123. Time.

IV. Charges of the commitment.

By the 3 *J. c.* 10. Every perſon who ſhall be committed to the common or uſual gaol, within any county or liberty, by any juſtice of the peace, for any offence or miſdemeanor, the ſaid perſon ſo to be committed, having means or ability thereunto, ſhall bear his own reaſonable charges for ſo conveying or ſending him to the ſaid gaol, and the charges alſo of ſuch as ſhall be appointed to guard him to ſuch gaol, and ſhall ſo guard him thither: And if any ſuch perſon ſo to be committed, ſhall refuſe at the time of his commitment and ſending to the ſaid gaol, to defray the ſaid charges, or ſhall not then pay or bear the ſame; then ſuch juſtice ſhall by writing under his hand and ſeal, give warrant to the conſtable of the hundred, or conſtable of the townſhip where ſuch perſon ſhall be dwelling and inhabit, or from whence he ſhall be committed, or where he ſhall have any goods within the county or liberty, to ſell ſuch and ſo much of the goods and chattels of the ſaid perſon ſo to be committed, as by the diſcretion of the ſaid juſtice ſhall ſatisfy and pay the charges of ſuch his conveying and ſending to the ſaid gaol, the appraiſement to be made by four of the honeſt inhabitants of the pariſh where ſuch goods ſhall be; the overplus to be delivered to the party. Charges.

And by the ſtatute of the 27 *G.* 2. *c.* 3. When any perſon, not having goods or money in the county where he is taken, ſufficient to bear the charges of himſelf and of thoſe who convey him, is committed to gaol, or to the houſe of correction, by warrant from a juſtice, then on application by the conſtable or other officer who conveyed him, to any juſtice for ſuch county or place, [ſuch juſtice] ſhall upon oath examine into and aſcertain the reaſonable expences, and ſhall without fee by his warrant order the treaſurer to pay the ſame. But in *Middleſex*, the ſame ſhall be paid by the overſeers of the poor of the pariſh where the perſon was apprehended.

Note; By the *habeas corpus* act, the charges of conveying an offender is limited not to exceed 12 *d.* a mile; which may be an argument for allowing as much in this caſe, eſpecially as ſecurity is to be given before a man is removed on that act by *habeas corpus*, that he ſhall not eſcape by the way, which renders guards in that caſe not ſo neceſſary.

V. Gaoler ſhall receive the priſoner.

Gaoler refuſing to receive.

If the gaoler ſhall refuſe to receive a felon, or take any thing for receiving him, he ſhall be puniſhed for the ſame, by the juſtices of gaol delivery. 4 *Ed.* 3. *c.* 10. *Dalt. c.* 170.

But if a man be committed for felony, and the gaoler will not receive him, the conſtable muſt bring him back to the town where he was taken; and that town ſhall be charged with the keeping of him, until the next gaol delivery: Or the perſon that arreſted him, may in ſuch caſe keep the priſoner in his own houſe, as it ſeemeth. *Dalt. c.* 170.

But in other caſes it ſeems, that regularly no one can juſtify the detaining a priſoner in cuſtody out of the common gaol, unleſs there be ſome particular reaſon for ſo doing; as if the party be ſo dangerouſly ſick, that it would apparently hazard his life to ſend him to the gaol, or there be evident danger of a *reſcous* from rebels, or the like. 2 *Haw.* 118.

VI. The gaoler ſhall certify the commitment.

Commitment to be certified.

By the 3 *H.* 7. *c.* 3. The ſheriff or gaoler ſhall certify the commitments, to the next gaol delivery.

VII. Commitment diſcharged.

Commitment diſcharged.

It ſeems that a perſon legally committed for a crime, certainly appearing to have been done by ſome one or other, cannot be lawfully diſcharged by any one but the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to proſecute him on a proclamation for that purpoſe by the juſtices of gaol delivery. But if a perſon be committed on a bare ſuſpicion, without an indictment, for a ſuppoſed crime, where afterwards it appears that there was none, as for the murder of a perſon thought to be dead, who afterwards is found to be alive; it hath been holden, that he may be ſafely diſmiſſed without any farther proceeding, for that he who ſuffers him to eſcape is properly puniſhable only as an acceſſary to his ſuppoſed offence; and it is impoſſible that there ſhould be an acceſſary, where there can be no principal; and it would be hard to puniſh one for a contempt, in diſregarding a commitment founded on a ſuſpicion, appearing in ſo unconteſted a manner to be groundleſs. 2 *Haw.* 121.

Mittimus for felony.

Weſtmorland. SIR John Pennington, *baronet, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the keeper of the gaol of our ſaid lord the king at* ——— *in the ſaid county, or to his deputy there, and to each of them, greeting. Whereas* A. O. *late of* ——— *in the ſaid county, labourer,*

labourer, hath been arreſted by the conſtable of ——— in the ſaid county, for ſuſpicion of a felony by him, as it is ſaid, committed, in ſtealing a black mare, of the value of 40s. *the property of* A. P. *of ——— in the ſaid county, yeoman: Therefore on the behalf of our ſaid lord the king, I command you and each of you, that you or one of you receive the ſaid* A. O. *into your cuſtody in the ſaid gaol, there to remain till he be delivered from your cuſtody by the law and cuſtom of* England. *Given under my hand and ſeal at ——— in the ſaid county, the ——— day of ——— in the ——— year of the reign of our ſaid lord ———.*

Another.

Weſtmorland. J. P. *eſquire*, &c. *To the keeper of the common gaol at ——— in the ſaid county, or to his deputy there: Theſe are in his majeſty's name to charge and command you, that you receive into your ſaid gaol, the body of* A. O. *late of ——— in the ſaid county, yeoman, taken by* A. C. *conſtable of ——— in the ſaid county, and by him brought before me for ſuſpicion of felony, that is to ſay, for ſtealing ——— And that you ſafely keep the ſaid* A. O. *in your ſaid gaol, until the next general gaol delivery for the ſaid county* [if he be not bailable; or if bailable, then thus] *until he ſhall thence be delivered by due courſe of law. And hereof fail you not*, &c.

Another.

Weſtmorland. J. P. *eſquire*, &c. *To the keeper of ——— I ſend you herewithal the body of* A. O. *late of ——— in the ſaid county, labourer, brought before me this preſent day, and charged with the felonious taking and carrying away forty ſheep, the property of ——— which alſo he hath confeſſed upon his examination before me* [by which he is not bailable]: *Therefore theſe are on the behalf of our ſaid lord the king to command you, that immediately you receive the ſaid* A. O. *and him ſafely keep in your ſaid gaol, until that he be thence delivered by the due order of law. Hereof fail you not, as you will anſwer for your contempt at your peril. Given under my hand and ſeal at ———* &c.

Or thus, in the king's name.

Weſtmorland. GEORGE *the ſecond by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth: To the keeper of our gaol at ——— in our ſaid county of* W. *or to his deputy, greeting: Whereas* A. O. *late of ——— in our ſaid county, yeoman, is arreſted for ſuſpicion of felony by him, as it is ſaid, committed, in feloniouſly taking and carrying away ——— of the value of ——— the property of ——— We therefore command you, and each of you, that you receive him the ſaid* A. O. *into your cuſtody in our ſaid gaol, or that one of you do receive him, there to remain till he be delivered from your cuſtody, according to the law of our kingdom of*

England. *Witneſs* J. P. *eſquire, one of the juſtices aſſigned to keep the peace in our ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in our ſaid county committed, at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of our reign.*

General warrant of commitment.

Weſtmorland. J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, To the conſtable of* ——— *in the ſaid county, and to the keeper of* ——— *at* ——— *in the ſaid county.*

Theſe are to command you the ſaid conſtable, in his majeſty's name, forthwith to convey and deliver into the cuſtody of the ſaid keeper of the ſaid ——— *the body of* A. O. &c. *And you the ſaid keeper are hereby required to receive the ſaid* A. O. *into your cuſtody in the ſaid* ——— *and him there ſafely to keep* &c. *Given under my hand and ſeal, the* ——— *day of* ——— *in the* ——— *year of the reign of his ſaid majeſty king* George *the ſecond.*

Common. (Nuſance by digging holes therein.) See **Highways.**

Common prayer.

Impugners of the book of common prayer.

1. IMpugners of the form of worſhip in the church of *England*, eſtabliſhed by law, and contained in the book of common prayer; of the 39 articles; of the rites and ceremonies of the church; and of epiſcopal government; ſhall be excommunicated *ipſo facto*, and not reſtored but by the biſhop or archbiſhop on their repentance. *Can.* 5, 6, 7.

Miniſters derogating from the book of common prayer.

2. If any parſon, vicar, or other miniſter, that ought to uſe the common prayer, or to miniſter the ſacraments, ſhall refuſe to do the ſame, or (wilfully ſtanding in the ſame) ſhall uſe any other form, or ſhall ſpeak any thing in derogation of the ſame book or of any thing therein contained; he ſhall, on conviction, for the firſt offence forfeit to the king one year's profit of all his ſpiritual promotions, and be impriſoned for ſix months; for the ſecond offence, ſhall be deprived of all his ſpiritual promotions, and be impriſoned for a year; and for the third offence, ſhall be deprived of all his ſpiritual promotions, and be impriſoned during life. And if he has no ſpiritual promotion, he ſhall for the firſt offence be impriſoned for a year; and for the ſecond offence, during life. 1 *El. c.* 2. *ſ.* 4—8.

But this ſhall not reſtrain the ſpiritual court, from proceeding againſt theſe offenders; and they may be deprived by the ſaid court,

court, according to the courſe of the ſpiritual law, for the firſt offence. *id. ſ.* 16, 23. 1 *Haw.* 9.

3. If any perſon whatſoever ſhall in plays, ſongs, or by other open words, ſpeak any thing in derogation of the ſame book, or any thing therein contained; or ſhall by open fact cauſe or procure any miniſter in any place to ſay common prayer openly, or to miniſter any ſacrament, in other form; or ſhall interrupt or let any miniſter to ſay the ſaid common prayer; he ſhall (being indicted for the ſame at the next aſſizes) forfeit to the king for the firſt offence 100 marks, and for the ſecond 400 marks; (which if not paid in 6 weeks after conviction, he ſhall ſuffer 6 months impriſonment for the firſt offence, and 12 months for the ſecond;) and for the third offence ſhall forfeit all his goods and chattels, and be impriſoned during life. 1 *El. c.* 2. *ſ.* 9, 10, 11, 12, 13, 20. Any perſon depraving the book of common prayer.

4. Where an incumbent reſides upon his living, and keeps a curate, the incumbent himſelf (not having lawful impediment to be allowed by the biſhop) ſhall at leaſt once a month openly and publickly read the common prayer, and (if there be occaſion) adminiſter the ſacraments, and other rites of the church; on pain of 5 *l.* to the poor, on conviction by confeſſion, or oath of two witneſſes, before two jnſtices; and in default of payment in ten days, the ſame to be levied by the churchwardens or overſeers by diſtreſs and ſale, by warrant of ſuch juſtices. 13 & 14 *C.* 2. *c.* 4. *ſ.* 7. Reſident incumbent to read the common prayer once a month.

Confeſſion.

CONFESSION is twofold, either *expreſs*, or *implied*.

An *expreſs* confeſſion is, where a perſon directly confeſſes the crime with which he is charged; which is the higheſt conviction that can be. 2 *Haw.* 333.

But it is uſual for the court, eſpecially if it be out of clergy, to adviſe the party to plead and put himſelf upon his trial, and not preſently to record his confeſſion, but to admit him to plead. 2 *H. H.* 225.

An *implied* confeſſion is, where a defendant in a caſe not capital, doth not directly own himſelf guilty, but in a manner admits it by yielding to the king's mercy, and deſiring to ſubmit to a ſmall fine; which ſubmiſſion the court may accept of if they think fit, without putting him to a direct confeſſion. 2 *Haw.* 333.

It ſeems that the confeſſion of the defendant taken upon an examination before juſtices of the peace, or in diſcourſe with private perſons, may be given in evidence againſt the party confeſſing, but not againſt others. 2 *Haw.* 429.

All thoſe who on their examination own themſelves guilty of a felony alledged againſt them, and are charged in their *mittimus* with the felony ſo confeſſed, ſeem to be excluded from bail; for bail is only proper where it ſtands indifferent whether the party be guilty or innocent. 2 *Haw.* 97.

Conies. See Game.

Conjuration. See Witchcraft.

Conſpiracy.

I. What it is.
II. How puniſhable.

I. What it is.

By the common law.

1. BY the common law there can be no doubt, but that all confederacies whatſoever, wrongfully to prejudice a third perſon, are highly criminal; as where divers perſons confederate together by indirect means to impoveriſh a third perſon, or falſly and maliciouſly to charge a man with being the reputed father of a baſtard child, or to maintain one another in any matter whether it be true or falſe. 1 *Haw.* 190.

By ſtatute.

2. And conſpiracy by ſtatute is as follows: *Conſpirators are they, that do confederate or bind themſelves by oath, covenant, or other alliance, that every of them ſhall aid and bear the other falſly and maliciouſly to indict, or cauſe to indict, or falſly to move or maintain pleas; and ſuch as retain men in the country, with liveries or fees to maintain their malicious enterpriſes; and this extendeth as well to the takers, as to the givers: And ſtewards and bailiffs of great lords, who by their office or power, undertake to bear or maintain quarrels, pleas, or debates, that concern other parties than ſuch as touch the eſtate of their lords or themſelves.* 33 Ed. 1. ſt. 2.

From this definition of conſpirators, it ſeems clearly to follow, contrary to the opinion of Lord *Coke*, that not only thoſe who actually cauſe an innocent man to be indicted, and alſo to be tried upon the indictment, whereupon he is lawfully acquitted, are properly conſpirators, but that thoſe alſo are guilty of this offence, who barely conſpire to indict a man falſly and maliciouſly, whether they do any act in proſecution of ſuch conſpiracy or not. 1 *Haw.* 189. L. *Raym.* 1169.

But an *action* will not lie for the conſpiracy, unleſs it be put in execution; for in ſuch caſe, the *damage* is the ground of the action. L. *Raym.* 378.

Alſo it plainly appears from the words of the ſtatute, that one perſon alone cannot be guilty of conſpiracy, within the purport of it; from whence it follows, that if all the defendants who are proſecuted for ſuch a conſpiracy be acquitted but one, the acquittal of the reſt, is the acquittal of that one alſo: And upon the ſame ground it hath been holden, that no ſuch proſecution is maintainable againſt a huſband and wife only, becauſe they are eſteemed but as one perſon in law. But it is certain, that an action on the caſe, in the nature of a conſpiracy, may be brought againſt one only: Alſo, it hath been reſolved, that if ſuch an ac-

tion be brought againſt ſeveral perſons, and all but one be acquitted, yet judgment may be given againſt that one only. 1 *Haw.* 192.

Alſo in the caſe of *K.* againſt *Kinnerſley and Moore*, *T.* 5 *G.* An information was brought, ſetting forth that the defendants, being evil diſpoſed perſons, in order to extort money from my lord *Sunderland*, did conſpire together to charge my lord with endeavouring to commit ſodomy with the ſaid *Moore*. The defendant *Kinnerſley* only appears, and pleads to iſſue, and is found guilty. And now exception was taken in arreſt of judgment, that to every conſpiracy there muſt be two perſons at leaſt, whereas here is only one brought in and found guilty, and the other poſſibly may be acquitted. But it was anſwered, that this is arguing from what has not happened, and probably never will; for tho' *Moore* may have an opportunity to acquit himſelf, and is not concluded by the verdict as *Kinnerſley* is, yet as the matter now ſtands, *Moore* himſelf is found guilty, for the conſpiracy is found as it is laid, and therefore judgment may be given againſt one, before the trial of the other. And a caſe was quoted, where ſeveral were indicted for a riot, *with many others*, and two only were found guilty; and it was objected, that there muſt be three to make a riot; but upon the words, *with many others*, judgment was given againſt the defendants. And the court overruled the exception. And the defendant had ſentence. And in the *Eaſter* term following, *Moore* alſo was convicted and had judgment. *Str.* 193.

And, *E.* 18 *G.* 2. *K.* againſt *Eliz. Niccols*. She was indicted for conſpiring with *Tho. Bygrave*, unjuſtly to charge *William Frankland* with a robbery, and for that purpoſe going before a juſtice, where *Bygrave* ſwore it upon him. *Niccols* only came in, and pleaded not guilty. And the jury found that ſhe was guilty, but that *Bygrave* died before the indictment was preferred. Exception was taken, that one alone cannot be guilty of a conſpiracy, and here is but one convicted. But the court overruled this, on the authority of *Kinnerſley*'s caſe, in which caſe there was a poſſibility of contradictory verdicts, which here cannot be. *Str.* 1227.

II. How puniſhed.

On action. 1. It is clear, that thoſe who are convicted of conſpiracy at the ſuit of the party, ſhall have judgment of fine and impriſonment, and to render the plaintiff his damages. 1 *Haw.* 193.

On indictment or information. 2. Alſo it is certain, that he who is convicted at the ſuit of the king, of a conſpiracy to accuſe another of a matter which may touch his life, ſhall have judgment that he ſhall loſe the freedom and franchiſe of the law (whereby he is diſabled from being put upon any jury, or to be ſworn as a witneſs, or even to appear in perſon in any of the king's courts), and alſo that his houſes, lands, and goods ſhall be ſeized into the king's hands, and his houſes and lands ſtripped and waſted, his trees rooted up, and his body impriſoned. And this is commonly called *villainous* judgment, and is given by the common law, and not by any ſtatute, and is ſaid

generally in ſome books to be the proper judgment upon every conviction of conſpiracy at the ſuit of the king, without any reſtriction to ſuch as endangered the life of the party; but this point doth not ſeem to be any where ſettled. 1 *Haw.* 193.

In the caſe of *Kinnerſley* and *Moore* above-mentioned, *Kinnerſley* was fined 500*l.* a year's impriſonment, and to find ſureties for his good behaviour for 7 years. *Moore* was ſentenced to ſtand in the pillory, ſuffer a year's impriſonment, and to find ſureties for 7 years. *Str.* 196.

Conſtable.

THE office of a conſtable, in executing of warrants, is treated of under the titles **Arreſt**, and **Warrant**; and in like manner the other particulars of his duty may be found under the reſpective titles throughout the book; this title treating only of the office of a conſtable in general.

I. Of the antiquity and original of conſtables.
II. Who ſhall be a conſtable.
III. How choſen and ſworn.
IV. His power as a conſervator of the peace.
V. His duty as a ſubordinate officer to juſtices of the peace.
VI. His indemnity and protection in his office.
VII. Concerning the expences of his office.
VIII. Concerning his account and removal from his office.

I. Of the antiquity and original of conſtables.

Antiquity of conſtables in general.

1. The ſundry names of high conſtables, or conſtables of lathes, rapes, wapentakes, hundreds, and franchiſes; and the divers names alſo of petty conſtables, tythingmen, borſholders, boroheads, headborows, chief pledges, and ſuch other (if there be any) that bear office in towns, pariſhes, hamlets, tythings, or borows, are all in effect but two, that is to ſay, *conſtables* and *borſholders*. Lamb. Conſt.

The word *conſtable* hath afforded matter of much diſquiſition to the learned. It is evidently a compound; but from what two original words it hath ſprung, hath been variouſly conjectured. Hiſtory traceth it from its arrival in *England*, backwards through *France*, and *Germany*, and *Greece*, to the imperial ſeat at *Conſtantinople* in the days of *Conſtantine* the great. From whence we aſcend further ſtill towards the eaſt, where we find the word *cõnt*

or

or *cûne* in *Paleſtine*, which ſignified in the times of the old teſtament a ſtability, ſtrength, or ſtay. Of which word there ſeem to be ſome traces in the mongrel name of *Laocoon* at *Troy*; and more eſpecially of this ſame *Conſtantine*, who was himſelf of oriental extraction, having ſprung from *Dardania*, a country of the upper *Moeſia*, and was ſaid by his flatterers to have been deſcended from *Dardanus* and the *Trojans*. And perhaps this appellation of the emperor might give occaſion to the adopting of the word into the *Roman* language at that time. For it was then that the word *count* (the genuine offspring of *cône* or *cûne*) firſt became a name of dignity, and from thence travelled weſtwards (with a little variation according to the genius of each language) throughout the provinces. Amongſt the *Saxons*, the word was *koning* or *kyninge*, from whence undoubtedly we received our *Engliſh* word *king*. Again, the word *ſtole*, *ſtalle*, *ſtaſle*, *ſtable*, by an eaſy tranſmutation of thoſe letters frequent in almoſt all languages (and which ſeemeth the other conſtituent of the word *conſtable*) is likewiſe common to thoſe languages of the middle ages, and ſignifieth a ſtanding place, diviſion, or department, called by the *Romans ſtatio*; and all of them probably from the ſame origin with the *Latin ſto*, and the ancient *Greek* word ϛαω. So that according to this etymology, the word *conſtable* will properly ſignify the ſtability or ſtay of the place, or the ſtrong man of the diviſion. The *German* word is *conneſtaſle*; the *French conneſtable*; the *Italian coneſtabile*; the *Spaniſh condeſtable*, from the word *conde* which they uſe for *count*. All which ſeem to be comprehended in the imperial denominations of the *Conſtantine* family, ſuch as *Conſtans*, *Conſtantius*, *Conſtantinus*, *Conſtantia*, *Conſtantina*, *Conſtantianus*, *Conſtantinacius*, and the like.

As touching *borſholders* (which is the other general name, and doth contain within it the meaning of tything-men, borowheads, headborows, thirdborows, and chief pledges) that is made up of the *Saxon borge*, *borrow*, or *borhoe*, a pledge, and *ealder*, the elder, chief or head; and *borſhealder* in one word doth mean the chief or head of the ſureties or pledges. For the underſtanding whereof, it is to be remembred, that by the ancient laws of this realm (before the coming in of king *William* the conqueror) it was ordained for the more ſure keeping of the peace, and for the better repreſſing of thieves and robbers, that all free born men ſhould caſt themſelves into ſeveral companies, by ten in each company; and that every of thoſe ten men of the company ſhould be ſurety and pledge for the forthcoming of his fellows: ſo that if any harm were done, by any of theſe ten, againſt the peace, then the reſt of the ten ſhould be amerced, if he of their company that did the harm ſhould fly, and were not forthcoming to anſwer to that wherewith he ſhould be charged. And for this cauſe, theſe companies are yet in ſome places of *England* called *boroes*, of the ſaid word *borge*, *borrow*, or *borhoe*, ſignifying a pledge or ſurety; and in other places they are called *tythings*, becauſe they contain (as hath been ſaid) the number of ten men with their families. And even as ten times ten do make an hundred, ſo becauſe it was then alſo appointed that ten of theſe companies

ſhould at certain times meet together for their matters of greater weight, therefore that general aſſembly, or court, was and yet is called a *hundred*. Furthermore, it was then alſo ordained, that if any man were of ſo evil credit, that he could not get himſelf to be received into one of theſe tythings or boroes, then he ſhould be ſhut up in priſon, as a man unworthy to live at liberty, amongſt men abroad. Now whereas every of theſe tythings or boroes did uſe to make choice of one man amongſt themſelves, to ſpeak and to do, in the name of them all; he was therefore in ſome places called the tythingman, in other places the boroes elder (whom we now call borſholder) in other places the borohead, or headborow, and in ſome other places the chief pledge, which laſt name doth plainly expound the other three that are next before it; for head or elder of the boroes, and chief of the pledges, are all one: and in ſome ſhires, where every third borow hath a conſtable, there the officers of the other two are called *thirdborows*. And in theſe tythings, or boroes, ſundry goods orders were obſerved; and amongſt others, firſt, that every man of the age of 12 years ſhould be ſworn to the king: Then, that no man ſhall be ſuffered to dwell in any town or place, unleſs he were alſo received into ſome ſuch ſuretiſhip and pledge as is aforeſaid: Thirdly, that if any of theſe pledges were impriſoned for his offence, then he ought not to be delivered without the aſſent of the reſt of his pledges: Again, that no man might remove out of one tything or boroe, to dwell in another, without lawful warrant in that behalf: Laſtly, that every of theſe pledges ſhould yearly be preſented and brought forth by their chief pledge, at a general aſſembly for that purpoſe, which we yet in remembrance thereof do call the *view of frankpledge*, or the leet court. *Lamb. Conſt.*

Some ſmall ſhadow of which antiquity we ſeem ſtill to retain in a common phraſe in drinking, when a man ſays to another that he will *pledge* him; which is ſaid to have begun when the *Danes* lorded it in this land; and the meaning was, to exhort the perſon to drink freely, for that the other would be ſurety to him that no one ſhould do him any bodily harm whilſt he was drinking.

Alſo we do ſtill retain the word *borrow* as a verb in our language, ſignifying to take money upon pledge or ſurety.

Antiquity of high conſtables.

2. By the ſtatute of *Wincheſter*, *In every hundred and franchiſe two conſtables ſhall be choſen to make the view of armour; and they ſhall preſent defaults of armour, and of ſuits of towns, and of highways, and ſuch as lodge ſtrangers in uplandiſh towns, for whom they will not anſwer.* 13 Ed. 1. ſt. 2. c. 6.

And from hence Lord *Coke*, and others, will have it, that high conſtables are no ancienter than this ſtatute: But Mr. *Hawkins* (agreeably with *Lambard*, *Dalton*, and other authorities) ſays, that it ſeems to be the better opinion, that both conſtables of hundreds, which are commonly called high conſtables, and alſo conſtables of tythings, which are at this day commonly called petty conſtables, or tythingmen, were by the common law, and not

not firſt ordained by the ſaid ſtatute of *Wincheſter*; for that ſtatute doth not ſay, that there ſhall be ſuch officers conſtituted, but clearly ſeems to ſuppoſe that there were ſuch before the making of it. 2 *Hawk.* 61.

In ſhort, the truth of the matter ſeems to be this: The far greateſt part of the buſineſs of high conſtables at this day, is not at all appropriated to them, as high conſtables; but only as officers to execute the precepts of the juſtices of the peace, which any other perſon may do as well as they. The original and proper authority of an high conſtable, as ſuch, ſeems to be the very ſame, and no other within his hundred, as that of the petty conſtable within his vill; and therein moſt probably, he is coeval with the petty conſtable. The other uſual branches of his office, ſuch as the ſurveying of bridges, the iſſuing precepts concerning the appointing of overſeers of the poor, ſurveyors of the highways, aſſeſſors and collectors of the land tax and window duties, and in like manner the viewing of armour by the abovementioned ſtatute, are in him, not of neceſſity, but as matter of convenience, and it is diſcretionary in the juſtices whom they will appoint to be their officers in theſe caſes; others have been ſuper-added to their office, for the like reaſon of convenience, by ſundry acts of parliament, ſuch as the iſſuing precepts for the licenſing of alehouſes, for levying the county rates, and for returning liſts of jurors; for that one perſon can do all the ſame much eaſier and cheaper, than ſo many different perſons.

II. Who ſhall be a conſtable.

Women. 1. It hath been ſaid, that a cuſtom in a town, that the inhabitants ſhall ſerve the office of conſtable by turns, according to the ſituation of their ſeveral houſes, is not good; for that by ſuch a courſe, it may come to a woman's turn to be conſtable, as inhabitant of one of thoſe houſes; yet we find ſuch cuſtoms allowed to be good in later books; and it ſeems, that the conſequence of the reaſoning abovementioned may well be denied, ſince a woman in ſuch caſe may procure another to ſerve for her. 2 *Hawk.* 63.

Apothecaries. 2. Apothecaries in *London*, and within ſeven miles thereof, being free of the company of apothecaries; and alſo thoſe in the country who have ſerved ſeven years apprenticeſhip, ſhall be exempted from the office of conſtable. 6 & 7 *W. c.* 4.

Attornies. 3. Alſo it ſeems certain, that if a ſworn attorney, or other officer, of the courts at *Weſtminſter*, be choſen into this office, he may have a writ of privilege for his diſcharge, by reaſon of his neceſſary attendance in thoſe courts: And it hath been reſolved, that ſuch officers ſhall have this privilege, not only where there is no ſpecial cuſtom concerning the election of conſtables, but alſo where they are choſen by a particular cuſtom, in reſpect of their eſtates, or otherwiſe; for that no ſuch cuſtom ſhall be intended to be more ancient than the uſages of thoſe courts, and therefore ſhall give way to them. 2 *Hawk.* 63.

Barriſters at law, ſervants to members of parliament. 4. And upon the like reaſons, it is taken for granted, that practiſing barriſters at law, and the ſervants of members of parliament,

liament, have the ſame privilege; but there ſeem to have been no reſolutions to this purpoſe. 2 *Haw.* 63.

Alderman of London.

5. Alſo it hath been reſolved, that an alderman of *London*, for the like reaſons, is not compellable to be a conſtable. 2 *Haw.* 63.

Captain of the guards.

6. But it hath been holden, that a captain of the king's guards, being preſented to ſerve as conſtable, in purſuance of a cuſtom in reſpect of his lands in a town, cannot claim this privilege; for that notwithſtanding he is bound by his office to perſonal attendance on the king's perſon, yet ſuch office being of late inſtitution, ſhall not prevail againſt an ancient cuſtom. 2 *Haw.* 63.

Phyſician.

7. Alſo it ſeems, that a practiſing phyſician, being choſen conſtable in purſuance of ſuch cuſtom, has no remedy for his diſcharge; for that there are no precedents of this kind, and his calling is private. 2 *Haw.* 63.

But by the 32 *H.* 8. *c.* 40. The preſident, commons and fellows of the faculty of phyſick in *London*, ſhall not be choſen conſtables.

Where there are others ſufficient

8. Yet if ſuch an officer as before mentioned, or a gentleman of quality who hath no ſuch office, or a practiſing phyſician, be choſen conſtable of a town, which hath ſufficient perſons beſides to execute this office, and no ſpecial cuſtom concerning it; perhaps he may be relieved by the king's bench: but it ſeems that even a cuſtom cannot exempt fitting perſons from ſerving the office of conſtable, where there are not ſufficient beſides them to execute it. But theſe points ſeem not to be ſettled. 2 *Haw.* 63.

Diſſenting teachers.

9. By the 1 *W.* *c.* 18. *ſ.* 11. Every teacher or preacher in holy orders, or pretended holy orders, in a congregation tolerated by law, ſhall from the time of his ſubſcription and taking the oaths, be exempted from the office of conſtable.

Proſecutors of felons.

10. And by 10 & 11 *W.* *c.* 23. *ſ.* 2, 3. The proſecuter of a felon to conviction, or perſon to whom he ſhall aſſign the certificate thereof, ſhall be diſcharged from the office of conſtable.

Whether he may appoint a deputy.

11. Inaſmuch as the office of a conſtable is wholly miniſterial, and no way judicial, it ſeems, that he may appoint a deputy to execute a warrant directed to him, when by reaſon of ſickneſs, abſence, or otherwiſe, he cannot do it himſelf; yet it doth not ſeem to be ſettled, that a conſtable can make a deputy, without ſome ſpecial cauſe. 2 *Haw.* 62.

And the ſuperior muſt be anſwerable for his deputy, upon any miſcarriage; unleſs the deputy is duly allowed and ſworn; for then he is conſtable. *Wood* 145.

Diſſenters appointing a deputy.

12. And by 1 *W.* *c.* 18. *ſ.* 7. If any perſon diſſenting from the church of *England*, ſhall be choſen conſtable, and ſhall ſcruple to take upon him the office, in regard of the oaths, or any other matter required to be done in reſpect of ſuch office; he may execute it by a ſufficient deputy by him to be provided, to be allowed by ſuch perſons, and in ſuch manner, as ſuch officer ſhould have been allowed.

III. How choſen and ſworn.

By whom to be choſen.

1. It being ſaid in ſome books, that both high and petit conſtables are to be choſen and appointed by the ſheriff in his torn (or by the lord of the leet); and by others, that they are to be choſen by the decennary, it ſeems difficult to determine, to whether of them the power of chuſing doth of right belong. 2 *Haw.* 62.

By whom to be ſworn.

2. Yet it ſeems clear, that whether a conſtable be to be choſen by the ſheriff, or decennary, yet he is to be ſworn and placed in his office by the ſheriff, as being judge of the court (or by the lord of the leet). 2 *Haw.* 62.

Cuſtom of chuſing.

3. Alſo it ſeems certain, that a cuſtom for chuſing a conſtable either way is good; and it ſeems to have been the opinion of the makers of the act of 13 & 14 *C.* 2. hereafter following, that the lords of the courts leet have this power of common right, and conſequently the ſheriff in his torn, where there is no court leet. 2 *Haw.* 63.

Chuſing high conſtables.

4. But now the uſual manner is, that the high conſtables of hundreds be choſen either at the ſeſſions, or by the greater number of the juſtices of the diviſion; and likewiſe that they be ſworn at ſeſſions, or by warrant from the ſeſſions; which courſe hath been often allowed and commended by the juſtices of aſſize. *Dalt. c.* 28.

And the reaſon thereof may be this, as hath been intimated above; namely, that their office at preſent doth not ſo much conſiſt in executing the office of high conſtable as ſuch, as in executing the juſtices precepts, which they may do for the moſt part, whether they be indeed high conſtables or not.

Petty conſtables appointed by juſtices of the peace.

5. And moreover, every petty conſtable, being a principal peace officer, and it being neceſſary for the preſervation of the peace, that every vill ſhould be furniſhed with one; the juſtices of the peace have ever ſince the inſtitution of their office, taken upon them as conſervators of the peace, not only to ſwear the petty conſtables, which have been choſen at a torn or leet, but alſo to nominate and ſwear thoſe who have not been choſen at any ſuch court, on the neglect of the ſheriffs or lords to hold their courts, or to take care that ſuch officers are appointed in them. And this power of juſtices of the peace having been confirmed by the uninterrupted uſage of many ages, ſhall not now be diſputed, but ſhall be preſumed to have been grounded on ſufficient authority. And ſome have carried this point ſo far, as to allow the juſtices at their ſeſſions, to ſwear one who was choſen at the leet, and unduly rejected by the ſteward, who had ſworn another in his place. 2 *Haw.* 65.

Where the leet ſhall make default.

6. However it is certain, that juſtices of the peace had power to nominate and ſwear conſtables, on the default of the torn or leet, before the ſtatute of 13 & 14 *C.* 2. *c.* 12. and therefore, that they have ſuch authority in ſome caſes not mentioned in that ſtatute; which enacts, that if a conſtable ſhall die, or go out of the pariſh, or continue above a year in his office, any two juſtices

ſtices may make and ſwear a new one, until the lord ſhall hold a leet, or till the next ſeſſions, who ſhall approve of the officer ſo made and ſworn, or appoint another. 2 *Haw.* 65.

Mandamus to compel the ſwearing a conſtable.

7. And it ſeems to be clear at this day, that the king's bench hath power by *mandamus* to compel the court or judge to ſwear a conſtable duly choſen. 2 *Haw.* 65.

Conſtable refuſing to be ſworn.

8. Conſtables lawfully choſen, if they ſhall refuſe to be ſworn, a juſtice of the peace may bind them over to the aſſizes or ſeſſions. *Dalt. c.* 28.

How puniſhed.

9. But it ſeemeth that the ſheriff, or ſteward of the leet, cannot lawfully commit them for ſuch refuſal, without more; but it is ſaid, that if the party be preſent in the court, he may be fined; and that if he be abſent, and have a certain time and place appointed him by the ſheriff or ſteward, for the taking of the oath before a juſtice of the peace, and have alſo expreſs notice of ſuch appointment, and be preſented at the next court, for having refuſed to take it accordingly, he may be amerced: alſo it ſeems, that in either caſe he may be indicted (A) either at the aſſizes or ſeſſions. And it is adviſable in all pleadings, in any action concerning ſuch a fine or amercement, and in all indictments for ſuch refuſal, ſpecially and expreſly to ſet forth the manner of every ſuch election, appointment, notice, and refuſal, and before whom the court was holden: and it hath been adjudged, that it is inſufficient to ſay in general, that the party was duly elected, or lawfully elected, or that he had notice, without ſetting forth the ſpecial circumſtances thereof. Alſo it is ſaid to have been adjudged, that an indictment for not finding a ſufficient perſon to ſerve the office of conſtable, without ſhewing that the party refuſed to ſerve it himſelf, is inſufficient. 2 *Haw.* 64.

Conſtable's oath.

10. There is a long form of a conſtable's oath in *Dalton*, which is adopted by Mr. *Barlow*, expreſſing his duty in many inſtances; but as that form nevertheleſs doth not contain the hundredth part of the conſtable's duty, nor indeed the moſt material inſtances of it, it may be more elegible (as no particular form is directed by any ſtatute) to ſwear him (B) to the due execution of his office in general, than to deſcend to thoſe particulars; leſt by mentioning ſome parts of his duty, and not others, he may be induced to think, that thoſe others are not ſo neceſſary.

Oaths of allegiance and ſupremacy.

11. By the 1 *G. ſt.* 2. *c.* 13. High conſtables are to take the oaths of allegiance, ſupremacy, and abjuration, and receive the ſacrament, as other perſons who qualify for offices; but petty conſtables are exempted.

IV. His power as a conſervator of the peace.

Conſtable a conſervator of the peace.

1. Every high and petty conſtable are by the common law conſervators of the peace. 2 *Haw.* 33. *Crom.* 6. *Dalt. c.* 1.

May commit for an affray in his preſence.

2. And therefore if any man ſhall make an affray or aſſault upon another in the preſence of the conſtable, or ſhall threaten to kill, beat, or hurt another, or ſhall be in a fury ready to break the peace; the conſtable may commit him to the ſtocks, or other ſafe cuſtody for the preſent, and after may carry him before a juſtice,

juſtice, or to gaol, until he ſhall find ſurety for the peace, which ſurety the conſtable himſelf may alſo take by obligation, to be ſealed and delivered to the king's uſe, and if the party will not find ſurety to the conſtable, he may impriſon the party until he ſhall do it, *Dalt. c.* 1.

3. But he may not require ſurety of the peace, unleſs the offence be upon his own view, and not if it be committed out of his ſight; for he cannot take any man's oath that he is afraid of death, becauſe he is not a judge of record; which is the reaſon that an obligation taken by him, ſhall be in his own name, and not in the king's name: and the ſame ſhall be certified at the ſeſſions of the peace. *Cro. Eliz.* 375, 376. But not when he is abſent.

V. His duty as a ſubordinate officer to juſtices of the peace.

It hath been always holden, that the conſtable is the proper officer to a juſtice of the peace, and bound to execute his warrants; and therefore it hath been reſolved, that where a ſtatute authorizes a juſtice of the peace to convict a man of a crime, and to levy the penalty by warrant of diſtreſs, without ſaying to whom ſuch warrant ſhall be directed, or by whom it ſhall be executed, the conſtable is the proper officer to ſerve ſuch warrant, and indictable for diſobeying it. 2 *Haw.* 62. Subordinate to the juſtices of the peace.

VI. His indemnity and protection in his office.

1. If an action is brought againſt a conſtable, for any thing done by virtue of his office; he, and alſo all others which in his aid, or by his command, ſhall do any thing concerning his office, may plead the general iſſue, and give the ſpecial matter in evidence, and if he recovers, he ſhall have double coſts. 7 *J. c.* 5. Double coſts.

2. And ſuch action ſhall be laid in the county where the fact was committed, and not elſewhere. 21 *J. c.* 12. Proper county.

3. Formerly the conſtable was bound to take notice of the juriſdiction of the juſtice; inſomuch that if the juſtice iſſued a warrant in any matter wherein he had no juriſdiction, the conſtable was puniſhable for the execution of it: but now, by the ſtatute of 24 *G.* 2. *c.* 44. it is enacted; No action if he delivers a copy of the warrant.

That no action ſhall be brought againſt any conſtable, or other perſon acting by his order, and in his aid, for any thing done in obedience to the warrant of a juſtice of the peace, until demand hath been made, or left at the uſual place of his abode, by the party, or by his attorney, in writing, ſigned by the party demanding the ſame, of the peruſal and copy of ſuch warrant, and the ſame hath been refuſed or neglected for ſix days after ſuch demand: and if after compliance therewith, any ſuch action ſhall be brought, without making the juſtice who ſigned ſuch warrant defendant, on producing and proving ſuch warrant at the trial, the jury ſhall give their verdict for the defendant, notwithſtanding any defect of juriſdiction in the juſtice. And if ſuch action be brought jointly againſt the juſtice and conſtable; on proof of ſuch warrant,

warrant, the jury ſhall find for the conſtable, notwithſtanding ſuch defect of juriſdiction as aforeſaid; and if the verdict be given againſt the juſtice, the plaintiff ſhall recover his coſts againſt him, to be taxed in ſuch manner by the proper officer, as to include ſuch coſts as the plaintiff is liable to pay to ſuch defendant, for whom ſuch verdict ſhall be found as aforeſaid. *ſ.* 6.

Note; By this it ſeemeth, that the conſtable ought not to return the warrant to the juſtice, but to keep it for his own juſtification; for he cannot grant to the party the peruſal of the warrant, unleſs he hath it: but he muſt certify to the juſtice what he hath done in the execution thereof.

No action but within 6 months.

4. And no action ſhall be brought againſt any conſtable, but within ſix months after the act committed. 24 *G.* 2. *c.* 44. *ſ.* 8.

Conſtable aſſaulted need not go back to the wall.

5. And if the conſtable is aſſaulted in the execution of his office, he need not go back to the wall, as private perſons ought to do; and if in the ſtriving together, the conſtable kills the aſſailant, it is no felony; but if the conſtable is killed, it ſhall be conſtrued premeditated murder. *Hale's Pl.* 37. 1 *H. H.* 457.

VII. Concerning the expences of his office.

Charges of making diſtreſs.

1. By the 27 *G.* 2. *c.* 20. The conſtable executing a juſtice's warrant, for levying a penalty, or other ſum of money directed by any act of parliament, by diſtreſs, may deduct his own reaſonable charges of taking, keeping, and ſelling the goods diſtrained; returning the overplus on demand, after ſuch penalty or ſum of money and charges deducted.

Charges of conveying an offender to gaol.

2. A perſon committed to gaol, for any miſdemeanor, ſhall bear his own charges (if able) for conveying or ſending him to the ſaid gaol, and the charges of thoſe that guard him thither; and if he ſhall refuſe at the time of commitment to defray the ſame, or ſhall not then pay the ſame, the juſtice committing him, ſhall by warrant to the high or petty conſtable where the perſon ſhall inhabit, or from whence he ſhall be committed, or where he ſhall have any goods within the county, order ſo much to be ſold thereof, as by his diſcretion ſhall ſatisfy the ſame; the appraiſement to be made by four honeſt inhabitants. 3 *J.* *c.* 10. *ſ.* 1.

And if he have not money nor goods within the county, ſufficient to bear the charges of himſelf and of thoſe who convey him to the gaol, or houſe of correction, the conſtable may make application to a juſtice, who may upon oath examine into and aſcertain the reaſonable expences, and ſhall by his warrant (without fee) order the treaſurer to pay the ſame; except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the pariſh where the perſon was apprehended. 27 *G.* 2. *c.* 3.

Charges about vagrants.

3. And by the 13 & 14 *C.* 2. *c.* 12. it is enacted, that whereas conſtables may be at great charge in relieving, conveying with paſſes, and in carrying rogues, vagabonds, and ſturdy beggars to the houſe of correction, and have no power to make rates to reimburſe themſelves; therefore the ſaid conſtables, together with the churchwardens and overſeers, and other inhabitants ſhall make a rate in like manner as the poor rate by the 43 *El.* *c.* 2.

which

which being confirmed under the hands and ſeals of two juſtices, may be levied by diſtreſs.

Mr. *Nelſon* and Mr. *Shaw* ſay, that this rate may be made for the purpoſe abovementioned, and for *other pariſh charges*; and direct five different forms of inſtruments to compel the payment thereof, ſetting forth therein generally, that the rates are to be made and levied for reimburſing the conſtable's neceſſary charges in the execution of his office. But there ſeems to be no ſuch power given by the ſtatute; for it is limited to expences about vagrants only; and even that ſeems to be rendred uſeleſs, by the vagrant act of 17 *G.* 2. which orders the ſaid expences to be paid out of the general county rate.

Neither is any ſuch power given by any other ſtatute; which indeed is hard upon the conſtable. It is but reaſonable, that the juſtices ſhould have power given by ſome act of parliament, to allow to the conſtable in all caſes a competent ſatisfaction for his trouble: for there ſeemeth to be no cauſe, why a conſtable who hath himſelf been guilty of no crime, ſhould be at much trouble and expence about thoſe who have, and have no compenſation for it.

VIII. Concerning his account and removal from his office.

Account. 1. The high conſtables ſhall at the general or quarter ſeſſions, if thereunto required, account for the general county rate by them received; on pain of being committed to gaol until they ſhall account; and ſhall pay over the money in their hands, according to the order of the ſaid court, on the like pain: And all their accounts and vouchers ſhall, after having been paſſed at the ſaid ſeſſions, be depoſited with the clerk of the peace, to be kept amongſt the records, and inſpected by any juſtice without fee. 12 *G.* 2. *c.* 29. *ſ.* 8.

Removal. 2. And in ſuch manner as conſtables are to be choſen, in the ſame manner, and by the like authority are they to be removed; ſo as if there ſhall be cauſe to remove and put an high conſtable from his place, it hath not been thought fit, that any one or two juſtices ſhould do it upon their diſcretion, but that it ſhould be done by the greater part of the juſtices of that diviſion, and that for ſome juſt cauſe; or elſe that it be done at the ſeſſions. *Dalt. c.* 28.

And it ſeems clear, that the ſheriff, or ſteward of the leet, having power to place a conſtable in his office, have by conſequence a power of removing him. 2 *Haw.* 63.

And alſo the juſtices of the peace have always uſed, for good cauſe, to diſplace all ſuch conſtables, as have been choſen and ſworn by them. 2 *Haw.* 65.

And by the 13 & 14 *C.* 2. *c.* 12. If a conſtable ſhall continue above a year in his office, the ſeſſions may diſcharge him, and put another in his place, till the lord ſhall hold a leet. *ſ* 15.

And if the court, or other judge, ſhall refuſe to diſcharge a conſtable, the king's bench may compel them by *mandamus*. 2 *Haw.* 65.

A. Indict-

A. Indictment for not taking the office.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the townſhip of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and long before, and always after until the day of the preferring of this indictment, was and is an inhabitant and reſiding within the townſhip of* ——— *aforeſaid in the county aforeſaid, and an able perſon to ſerve the office of conſtable for the ſame townſhip; and he the ſaid* A. O. *on the ſaid* ——— *day of* ——— *in the year aforeſaid, in the townſhip aforeſaid, lawfully and in due manner was elected and choſen by* ——— *ancient inhabitants of the ſame townſhip, according to the ancient cuſtom of chuſing conſtables for the ſaid townſhip, into the office of conſtable for the ſaid townſhip of* ——— *in the ſaid county, for one year from thence next following, to do and execute all and ſingular thoſe things which belong to the office of conſtable; and that the ſaid* A. O. *afterwards, to wit, on the* ——— *day of* ——— *in the year aforeſaid, at the townſhip of* ——— *aforeſaid in the county aforeſaid, had due notice thereof, and then and there was required to appear before* J. P. *eſquire, then and yet one of his majeſty's juſtices aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, on the ſaid* ——— *day of* ——— *in the year aforeſaid, to take his oath for the due executing the ſaid office of conſtable for the ſame townſhip, according to the duty of that office; nevertheleſs the ſaid* A. O. *his duty in that behalf not regarding, but contriving and intending wholly to neglect to ſerve the ſaid office of conſtable, after he the ſaid* A. O. *was ſo elected and choſen into the ſaid office as aforeſaid, to wit, on the ſaid* ——— *day of* ——— *in the year aforeſaid, and continually afterwards until the day of taking this inquiſition, at the townſhip aforeſaid in the county aforeſaid, unlawfully and contemptuouſly did refuſe, and ſtill doth refuſe, to take his ſaid oath for the due executing the ſaid office of conſtable, and in any wiſe to execute the ſame office, to the great hindrance of juſtice, in contempt of our ſaid lord the king, and to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king.*

B. Conſtable's oath.

YOU *ſhall well and truly ſerve our ſovereign lord the king,* [*and the lord of this leet,* if ſworn in a court leet] *in the office of conſtable, for the townſhip of* ——— *for the year enſuing* [or, *until you ſhall be lawfully diſcharged therefrom*; or, *until another ſhall be ſworn in your place:*] *You ſhall well and truly do and execute all things belonging to the ſaid office, according to the beſt of your ſkill and knowledge: So help you god.*

Conviction.

THE power of a juſtice of the peace is in reſtraint of the common law, and in abundance of inſtances is a tacit repeal of that famous clauſe in the great charter, that a man ſhall be tried by his equals; which alſo was the common law of the land long before the great charter, even for time immemorial, beyond the date of hiſtories and records. Therefore generally nothing ſhall be preſumed in favour of the office of a juſtice of the peace; but the intendment will be againſt it. Therefore where a ſpecial power is given to a juſtice of the peace by act of parliament, to convict an offender in a ſummary manner, without a trial by jury, it muſt appear that he hath ſtrictly purſued that power; otherwiſe the common law will break in upon him, and level all his proceedings. Therefore where a trial by jury is diſpenſed withal, yet he muſt proceed nevertheleſs according to the courſe of the common law in trials by juries, and conſider himſelf only as conſtituted in the place both of judge and jury. Therefore there muſt be an information or charge againſt a perſon; then he muſt be ſummoned or have notice of ſuch charge, and have an opportunity to make his defence; and the evidence againſt him muſt be ſuch as the common law approves of, unleſs the ſtatute ſpecially directeth otherwiſe; then, if the perſon is found guilty, there muſt be a conviction, judgment, and execution, all according to the courſe of the common law, directed and influenced by the ſpecial authority given by ſtatute; and in the concluſion, there muſt be a *record* of the whole proceedings, wherein the juſtice muſt ſet forth the particular manner and circumſtances, ſo as if he ſhall be called to account for the ſame by a ſuperior court, it may appear that he hath conformed to the law, and not exceeded the bounds preſcribed to his juriſdiction.

The difficulty of drawing up a conviction in due form, hath induced the legiſlature to inſtitute a more apt and compendious method in divers inſtances; and it were to be wiſhed, in eaſe of the juſtices, that this proviſion might be made more general. Theſe ſummary forms of convictions, which are ſpecially directed by act of parliament, are interſperſed throughout this book under the titles to which they do reſpectively belong.

Other forms of convictions, which are left at large according to the courſe of the common law (having no preſcriptive form of words directed by any act of parliament) are likewiſe drawn forth at length under divers titles; particularly, concerning ſuch matters as have been often controverted in the courts above, occaſioned either by the largeneſs of the penalties, or ſometimes by the greatneſs of the offenders; as in caſes of riots, forcible entries, deer ſtealing, and ſuch like.

It remaineth, under this title, to inſert one general precedent or form of conviction for the whole; which may be to the effect following:

General form of conviction.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* ——— *in the county of* ——— *aforeſaid,* A. I. *of* ——— *cometh before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed,* [*reſiding near to the place where the offence herein after mentioned was committed*; or as the ſtatute requires] *and giveth me the ſaid juſtice to underſtand and be informed, that one* A. O. *of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *now laſt paſt, at* ——— *in the ſaid county, did* [here ſet forth the fact, in the words of the ſtatute as near as may be] *againſt the form of the ſtatute in ſuch caſe made and provided: And afterwards, upon the aforeſaid* ——— *day of* ——— *in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, he the ſaid* A. O. *after being duly ſummoned in this behalf before me the juſtice aforeſaid appeareth and is preſent, in order to make his defence againſt the ſaid charge contained in the ſaid information, and having heard the ſame, he the ſaid* A. O. *is aſked by me the ſaid juſtice, if he can ſay any thing for himſelf, why he the ſaid* A. O. *ſhould not be convicted of the premiſſes above charged upon him in form aforeſaid; who pleadeth that he is not guilty of the ſaid offence. Nevertheleſs, on the day aforeſaid, in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, one credible witneſs, to wit,* A. W. *of* ——— *yeoman, cometh before me the juſtice aforeſaid, and before me the ſame juſtice upon his oath on the holy goſpel to him then and there by me the juſtice aforeſaid adminiſtred, depoſeth, ſweareth, and on his oath aforeſaid affirmeth and ſaith, that the aforeſaid* A. O. *on the* ——— *day of* ——— *aforeſaid, in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, did* [here again ſet forth the fact, or ſo much thereof as is ſufficient to convict the offender] *And thereupon the aforeſaid* A. O. *the* ——— *day of* ——— *aforeſaid, in the year aforeſaid, before me the juſtice aforeſaid, by the oath of one credible witneſs aforeſaid, according to the form of the ſtatute aforeſaid is convicted; and for his offence aforeſaid hath forfeited the ſum of* ——— *of lawful money of* Great Britain, *to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof, I the ſaid juſtice to this preſent record of the conviction as aforeſaid, have ſet my hand and ſeal at* ——— *aforeſaid, in the county aforeſaid, the day and year firſt abovewritten.*

If he confeſſes the fact then ſay, ——— *And becauſe the ſaid* A. O. *hath nothing to ſay, nor can ſay any thing in his own defence touching and concerning the premiſſes aforeſaid, but doth of his own accord freely and voluntarily acknowledge and confeſs all and ſingular the ſaid premiſſes to be true, in manner and form as the ſame are charged upon him in the ſaid information; and becauſe all and ſingular the premiſſes being heard and fully underſtood by me the ſaid juſtice, it manifeſtly appears to me* ——— Or, if the party hath been ſummoned,

moned, and doth not appear, then ſay,——*Whereupon, on the ſaid* ——— *day of* ——— *in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, he the ſaid* A. O. *was duly ſummoned in this behalf, to appear before me, in order to make his defence againſt the ſaid charge contained in the ſaid information, but the ſaid* A. O. *doth neglect to appear before me, and doth not appear, nor make any defence againſt the ſaid charge as aforeſaid; Therefore I the ſaid juſtice, on the ſaid* ——— *day of* ——— *in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, do proceed to examine into the truth of the ſaid complaint; And* A. W. *of* ——— *a credible witneſs, cometh before me the juſtice aforeſaid, and before me the ſame juſtice upon his oath* &c.

Cometh before me] A conviction ought to be in the preſent tenſe, and not in the time paſt. L. *Raym.* 1376. *Str.* 608. *Roberts*'s caſe.

And giveth me to underſtand and be informed] A conviction ought to be on an information or complaint precedent. *M.* 11 *W. K.* and *Fuller.* L. *Raym.* 510.

That one A. O. *of* ——— *in the ſaid county, yeoman,* &c.] All acts, which ſubject men to new and other trials, than thoſe by which they ought to be tried by the common law, being contrary to the rights and liberties of Engliſhmen, as they were ſettled by *magna charta*, ought to be taken ſtrictly; and the court of king's bench will require, that it do appear upon the face of ſuch proceedings, that the fact was an offence within the act, and that the juſtices have proceeded accordingly. *M.* 1 *An. K.* and *Chandler.* 1 *Salk.* 378. L. *Raym.* 581.

Therefore the particular manner of the offence ought to be ſet forth. Thus in the caſe of ſwearing, before the legiſlature by the act of the 19 *G.* 2. had directed a ſummary form of words for the conviction, it was required not only to ſet forth that the perſon had curſed or ſworn in general, but the particular oaths and curſes were to be ſet forth, that the court might judge thereupon, whether they were indeed oaths and curſes or not. *H.* 8 *G. K.* and *Sparling. Strange* 497.

And in the caſe of *K.* and *Roberts*, *M.* 11 *G.* which was a conviction for ſwearing 150 oaths in theſe words *by god*, and curſing 150 curſes in theſe words *god damn you*, this matter was carried ſo far, that it was inſiſted this was not ſufficient, but that the oaths and curſes ought to have been ſet forth 150 times each. But the oaths and curſes being all only in the ſame words over again, the court held the conviction good. *Str.* 608. L. *Raym.* 1376.

And it ſeemeth, that a conviction on a penal ſtatute ought expreſly to ſhew, that the defendant is not within any of its proviſoes; for ſince no plea can be admitted to ſuch a conviction, and the defendant can have no remedy againſt it, but from an exception to ſome defect appearing in the face of it, and all the proceedings are in a ſummary manner, it is but reaſonable that ſuch a conviction ſhould have the higheſt certainty, and ſatisfy the court,

that the defendant had no ſuch matter in his favour, as the ſtatute it ſelf allows him to plead. 2 *Haw.* 250.

But in the caſe of *K.* and *Ford*, *T.* 9 *G.* There was a conviction on the 3 *C. c.* 3. for keeping an alehouſe without licence; and it was objected, that in the act there is a proviſo to exempt perſons who have been puniſhed by the former law of the 5 & 6 *Ed.* 6. *c.* 25. and therefore it ſhould have been ſaid, he had not been proceeded againſt upon that act; But by the court, That coming in by way of proviſo, he ſhould have inſiſted on it in his defence; it appears he was aſked what he had to ſay, and therefore we may reaſonably preſume he had no ſuch defence to make. And the conviction was confirmed. *Strange* 555.

And in the caſe of *K.* and *Bryan*, *M.* 12 *G.* 2. The defendant was convicted on the gin act; and an exception was taken, that there was no averment, that it was not ſold to be uſed in medicine: and the caſes on the game act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game. On the other hand, it was inſiſted, that the reaſon of that was, becauſe thoſe were in the enacting clauſe, whereas this about medicine comes in by way of proviſo, and is by way of defence to be ſhewn on the defendant's part: And for that purpoſe was cited, *M.* 11 *G. K.* and *Theed*; where in a conviction for obſtructing an exciſe officer on the 8 *An. c.* 9. it was objected, that it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but was held to be well, and its being in the night, ſhould have been ſhewn on the defendant's part. And by the court, This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. And the conviction was confirmed. *Strange* 1101.

Being duly ſummoned] *T.* 11 *G. K.* and *Venables*. The court were unanimouſly of opinion, that the party ought to be heard, and for that purpoſe ought to be ſummoned in fact; and that if the juſtices proceeded againſt a perſon without ſummoning him, it would be a miſdemeanor in them, for which an information would lie. L. *Raym.* 1406.

And in the caſe of *K.* and *Allington*, *H.* 12 *G.* On affidavit that no ſummons was had, the court granted an information againſt the juſtice who made the conviction. *Strange* 678.

H. 6 *G. K.* and *Johnſon*. The defendant was convicted for keeping a gun. And exception was taken, that there was not a *reaſonable* ſummons; for it was made to appear the ſame day, which might be impoſſible upon account of the diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning: then it was to appear *at the pariſh aforeſaid*, whereas there were two pariſhes mentioned before; ſo the man might have gone to one, whilſt they were convicting him at the other. It was anſwered, that the defendant appeared at the time, and made defence; ſo that cures all

all defects in the ſummons. And by the court, The anſwer is right. *Strange* 261.

H. 3 *G. K.* and *Simpſon.* The defendant was convicted for deer ſtealing; and the conviction ſet forth, that he had been ſummoned to appear before the juſtices, but it did not appear he ever was before them. Exception was taken to this, that as no appeal lies in this caſe, the juſtices ſhould not have proceeded in the abſence of the party, eſpecially where it may end in a corporal puniſhment, as it may do here for want of a diſtreſs. And at another day, on conſideration, *Parker* Ch. J. delivered the reſolution of the court: We are all of opinion, the offender may be convicted, without appearing. The ſtatute is ſilent as to the method of proceeding, and the law of *England*, it is true, in point of natural juſtice, always requires the party charged with any offence, to be heard before he be condemned in judgment; but that rule muſt have this exception, unleſs it is through his own default: were it otherwiſe, every criminal might avoid conviction. *Strange* 44.

But, generally, it is not neceſſary to *ſet forth the ſummons in the conviction*; for although no ſummons is ſet forth, yet the court will intend one: but where a ſummons is ſet forth, and that ſummons appears to be irregular, the court will quaſh the conviction, there being then no room to intend any other ſummons. 11 *G. K.* and *Venables. Seſſ. C. V.* 1. 210. L. *Raym.* 1405.

One credible witneſs, to wit, A. W. *of* ——— *yeoman*] It is requiſite to name the witneſs, that it may appear he is not the ſame perſon who was the informer; for an informer who hath a ſhare of the penalty, is never allowed to be a witneſs, unleſs in caſe where a ſtatute ſhall ſpecially ſo direct it.

On his oath aforeſaid affirmeth and ſaith] In all convictions, being in the nature of judgments, the whole evidence ought to be ſet forth, or at leaſt ſo much thereof as is ſufficient to warrant the conviction; that the court of king's bench may judge of the ſufficiency thereof: but otherwiſe it is in orders, which are authoritative. And ſo it was laid down in the caſe of *K.* and *Floyd*, *M.* 8 *G.* 2. which was thus; A motion was made to quaſh an order of ſeſſions, made under the ſtatute of the 1 *W. c.* 21. *ſ.* 6. whereby the defendant was adjudged guilty *upon full proof* of the charge againſt him, and that he be diſcharged from his office of clerk of the peace, upon the objection that the evidence is not ſet out: But it was adjudged after conſideration, that this was an order, and therefore the evidence need not be ſhewn; but that it would be otherwiſe if it was a conviction. *Andr.* 82. *Str.* 996.

M. 5 *G.* 2. *K.* and *Theed.* A conviction on the candle act was quaſhed, becauſe the evidence was not ſet out; it being only alledged, that the offence was *fully and duly proved. Strange* 919. *Andr.* 84.

T. 6 *G. K.* and *Baker.* A conviction for taking pilchards, againſt the form of the ſtatute, quaſhed; becauſe the witneſs ſwears generally that the defendant *is guilty of the premiſſes*, and that is taking upon himſelf to ſwear the law. *Strange* 316.

M. 11 *W. K.* and *Fuller.* A conviction ought to be certain, and not taken upon collection. L. *Raym.* 510.

And for his offence aforesaid hath forfeited] *H.* 3 *G.* 2. *K.* and *Hawks.* A conviction for killing a deer was quashed, because it was only ——— *he is convicted*, without any judgment of forfeiture. *Strange* 858.

To be distributed as the statute aforesaid doth direct] *M.* 9 *An. K.* and *Barret.* A conviction for deer stealing did set forth, that ——— *he is convicted, and shall forfeit* 30 l. *according to the form of the statute*, without making a distribution, which ought to be 10 *l.* to the informer, 10 *l.* to the party grieved, and 10 *l.* to the poor. But by the court, This is well enough; for by the statute he is only to forfeit in case he has goods, which is conditional, and not absolute. 1 *Salk.* 383.

Note; On a suggestion that the defendant hath a title to the thing in question, a prohibition will be granted by the king's bench, before or after conviction, to stay the justice from proceeding; for without doubt if the defendant have but a colour of title, the justices have no jurisdiction in the cause, as where the defendant was convicted for cutting trees, where he had a right of common. L. *Rrym.* 901.

Corn.

For the forestalling, ingrossing, or regrating of corn; see title **Forestalling.**

I. The measure of corn.
II. Licensing badgers of corn.
III. The offences of cutting corn growing, and of burning stacks of corn.
IV. Exportation of corn.
V. Importation of corn.

I. The measure of corn.

Buying corn in the sheaf without measuring.

1. TO buy or sell corn in the sheaf, before it is threshed and measured, is against the common law of *England*; and the reason thereof seemeth to be, for that by such sale the market is in effect forestalled 3 *Inst.* 197.

Penalty of selling otherwise than by Winchester measure.

2. If any person shall sell corn otherwise than by *Winchester* measure, sealed and stricken by the brim, he shall forfeit 40 *s.* on conviction before one justice, on the oath of one witness; to be levied

levied by the churchwardens and overſeers, or ſome of them, to the uſe of the poor, by diſtreſs and ſale. In default of diſtreſs, impriſonment till paid. 22 *C.* 2. *c.* 8. *ſ.* 2.

And if any mayor, or other head officer, ſhall knowingly permit the ſame, he ſhall, upon conviction thereof at the county ſeſſions, forfeit 5 *l.* half to the proſecutor, and half to the poor, by diſtreſs and ſale; for want of diſtreſs, to be impriſoned by warrant of the juſtices, till payment be made. *ſ.* 3.

Further penalty.

3. And moreover, every perſon who ſhall ſell or buy corn, without meaſuring, being thereunto required, or in any other manner than is by the 22 *C.* 2. *c.* 8. directed, and that without ſhaking of the meaſure by the buyer, he ſhall, beſide the penalty of that act, forfeit all the corn ſo bought or ſold, or the value thereof, to the party complaining. 22 & 23 *C.* 2. *c.* 12. *ſ.* 2.

And on complaint made to a juſtice of the peace, that corn hath been bought, ſold, or delivered contrary to this act, the proof ſhall lie upon the defendant, to make it appear by the oath of one witneſs, that he ſold or bought the ſame lawfully; wherein if he ſhall fail, he ſhall forfeit as is ſaid before, to be levied by diſtreſs and ſale; which ſhall by the juſtice be diſtributed, half to the poor, and half to the informer. 22 & 23 *C.* 2. *c.* 12. *ſ.* 3.

Difference of meaſures.

4. But notwithſtanding all the ſtatutes that have been made, for the uniformity of meaſures throughout the realm, yet the meaſure of corn differs in many places, the buſhel being greater in one place than in another. And altho' regularly, a cuſtom or preſcription againſt a ſtatute is void, except it be confirmed by the ſtatute, or ſaved by another ſtatute; yet it is ſaid, that in the meaſure of corn, the cuſtom of the place is to be obſerved, if it be a cuſtom beyond all memory, and uſed without any viſible interruption. *Barl.* 578.

II. Licenſing badgers of corn.

Who may be licenſed to be a badger.

1. No badger, lader, kidder, carrier, buyer, or tranſporter of corn or grain ſhall be licenſed (A) but only ſuch who is or hath been a married man, and is an houſholder, and not an houſhold ſervant, nor retainer to any perſon, and of the age of 30 years at the leaſt. 5 *El.* *c.* 12. *ſ.* 4.

In ſeſſions only.

2. And he ſhall be licenſed only in the open ſeſſions of the ſhire where he hath dwelt for three years laſt paſt. 5 *El.* *c.* 12. *ſ.* 4.

Date and ſigning.

3. Which licence ſhall bear date of the day and place where the ſeſſions is holden, and ſhall be ſigned and ſealed, by three juſtices at ſuch ſeſſions, one being of the *quorum*. 5 *El.* *c.* 12. *ſ.* 5.

Recognizance to purſue the licence.

4. And the juſtices at ſuch ſeſſions may take recognizance (B) that the perſon licenſed ſhall not by colour thereof foreſtall or ingroſs, or do any thing contrary to the act againſt foreſtalling, ingroſſing, and regrating, of the 5 & 6 *Ed.* 6. *c.* 14. 5 *El.* *c.* 12. *ſ.* 6.

Fee to the clerk of the peace.

5. And the licence and recognizance ſhall be written by the clerk of the peace, or his deputy, and no other perſon; for which, he ſhall have 12 *d.* for the licence, and 8 *d.* for the recognizance, and for regiſtring them both 4 *d.* For which fee, he

shall also keep a register book, and therein enter the names and dwelling places of the persons licensed, with a brief declaration of the licence, and of the day, time, and place when granted: which book he shall have at the sessions. 5 *El. c.* 12. *s.* 6.

How long the licence shall continue.

6. And such licence shall be only of force for one year. 5 *El. c.* 12. *s.* 4.

Penalty of being licensed otherwise.

7. Any person taking licence contrary hereto, shall forfeit to the king 5 *l.* and the licence shall be void. 5 *El. c.* 12. *s.* 5.

Not to buy out of the market.

8. And no person, by authority of such licence, shall buy corn out of open fair or market, to sell again, unless he be thereunto particularly licensed, and have special and express words in the licence, that he may so do; on pain of 5 *l.* half to the king, and half to him that will sue. 5 *El. c.* 12. *s.* 7.

Sessions may determine.

9. And the sessions may hear and determine the offences aforesaid, by inquisition, presentment, bill, or information, and by examination of two witnesses, and make process thereupon, as upon indictment, and estreat the king's moiety, and award execution of the other moiety to the party, by *fieri facias*, or *capias*, as the courts at *Westminster* may do. 5 *El. c.* 12. *s.* 8.

Not to extend to corporations.

10. But nothing of all this shall extend to prejudice the liberty of a city, or town corporate, but that they may licence purveyors for the provision thereof, as before this act. 5 *El. c.* 12. *s.* 9.

Not to extend to certain counties.

11. Also it is provided, that this shall not extend to the counties of *Westmorland*, *Cumberland*, *Lancaster*, *Chester*, and *York*; but that they may do as heretofore they have lawfully used to do. 5 *El. c.* 12. *s.* 10.

But by a general clause in the statute of the 13 *El. c.* 25. *s.* 20. these other counties seem now to be included; which enacts, that no person or persons (without any exception as to particular counties) shall be a buyer, badger, kidder, or carrier of corn in other manner than is contained in the statute made in the 5 *El. c.* 12. nor shall be any other ways admitted or licensed to be a buyer, badger, kidder, or carrier as aforesaid, than is mentioned and appointed by the said statute.

III. The offences of cutting corn growing, and of burning stacks of corn.

Cutting corn growing.

1. Every person who shall unlawfully cut or take away any corn or grain growing, being convicted thereof by confession, or oath of one witness, before one justice, shall for the first offence pay such damages as the justice shall appoint: and if the justice shall think him not able or sufficient, or if he do not pay such damages, he shall commit him to the constable where the offence is committed, or where the party is apprehended, to be whipped; and for every other offence he shall in like manner be whipped. The constable refusing, shall be committed by the justice, till he conform. 43 *El. c.* 7.

But if he cut it at one time, and then come again at another time and take it away, it is felony. 1 *Hawk.* 93.

Burning corn in the night.

2. If any person shall, in the night time, maliciously and willingly burn or cause to be burnt, any rick or stack of corn, he shall be

be guilty of felony: but to avoid judgment of death, he may make his election to be tranſported for ſeven years. And three juſtices (1 Q.) may determine the ſame. 22 & 23 C. 2. c. 7.

3. But by the 9 G. c. 22. commonly called the Black act, which is inſerted more at large in the title of that name, and which by the laſt continuance is to be of force till *Sep.* 1. 1757, &c. If any perſon ſhall ſet fire to any mow or ſtack of corn, he ſhall be guilty of felony without benefit of clergy. *ſ.* 1. Burning by night or day.

And the hundred ſhall anſwer the damages, not exceeding 200 *l.* *ſ.* 7, 8, 9, 10.

And if any perſon ſhall apprehend, or cauſe to be convicted, ſuch offender, and ſhall be killed, or wounded ſo as to loſe an eye, or the uſe of any limb, in apprehending or endeavouring to apprehend ſuch offender, on proof thereof at the ſeſſions, and certificate thereof from thence, the ſheriff ſhall pay to the perſon intitled the ſum of 50 *l.* in 30 days, to be repaid to him out of the treaſury. *ſ.* 12.

IV. Exportation of corn.

1. The king may at any time, by proclamation, prohibit the exportation of corn generally, or out of any ſpecial ports by name, for ſuch time as ſhall be therein limited. 1 *J.* c. 25. *ſ.* 27. The king may prohibit by proclamation.

2. No duty or ſubſidy whatſoever ſhall be paid on the exportation of wheat, rye, barley, malt, beans, peaſe, or other grain, bread, biſcuit, or meal. 11 & 12 *W.* c. 20. *ſ.* 4. Duty on exportation taken off.

3. But when malt or barley are at or under 24 *s.* a quarter, rye 32 *s.* wheat 48 *s.* every perſon exporting the ſame in *Engliſh* ſhipping, ſhall have from the officers of the cuſtoms, for every quarter of barley or malt exported (ground or unground) 2 *s.* 6 *d.* of rye 3 *s.* 6 *d.* of wheat 5 *s.* 1 *W.* c. 12. And of wheat malt 5 *s.* 5 *An.* c. 29. *ſ.* 15. Bounty on exportation.

And by 5 *An.* c. 8. *art.* 6. & *ch.* 29. *ſ.* 10. when oats do not exceed 15 *s.* a quarter, a bounty of 2 *s.* 6 *d.* a quarter ſhall be paid for oatmeal exported.

4. And if any perſon ſhall wilfully and maliciouſly beat, wound, or uſe any other violence to any perſon, with intent to hinder him from buying corn in any market or other place; or ſhall unlawfully ſtop or ſeize upon any waggon, cart, or other carriage, or horſe, loaded with wheat, flour, meal, malt, or other grain, in or on the way to or from any city, market town, or ſea port, and wilfully and maliciouſly break, cut, ſeparate, or deſtroy the ſame, or any part thereof, or the harneſs of the horſes drawing the ſame; or ſhall unlawfully take off, drive away, kill, or wound any of ſuch horſes; or unlawfully beat or wound the driver; or ſhall by cutting of the ſacks, or otherwiſe, ſcatter or throw abroad ſuch wheat, flour, meal, malt, or other grain, or ſhall take and carry away, ſpoil, or damage the ſame, or any part thereof: every ſuch perſon, being convicted thereof, before two juſtices or the ſeſſions, ſhall be ſent to the gaol or houſe of correction, for any time not exceeding three months, nor leſs than one month, and be once publickly and openly whipped by the maſter of ſuch gaol, or Penalty of hindring exportation.

or houſe of correction, in ſuch city, market town, or ſea port, in or near which the offence ſhall be committed, on the firſt convenient market day, at the market croſs, or market place there, between the hours of 11 and 2. 11 G. 2. c. 22. ſ. 1.

And if any ſuch perſon ſo convicted, ſhall commit any of the offences aforeſaid a ſecond time; or if any perſon ſhall wilfully and maliciouſly pull down, throw down, or otherwiſe deſtroy any ſtorehouſe, or granary, or other place where corn ſhall be then kept in order to be exported; or ſhall unlawfully enter any ſuch ſtorehouſe, granary, or other place, and take and carry away any corn, flour, meal, or grain therefrom, or otherwiſe ſpoil or damage any meal, flour, wheat, or grain therein, intended for exportation: every perſon ſo offending, and being thereof lawfully convicted, ſhall be adjudged guilty of felony, and be tranſported for ſeven years. ſ. 2, 3.

And the hundred ſhall be liable to anſwer damages (not exceeding 100 *l.*), to be ſued for and levied as in caſes of robbery; the perſon injured giving notice of the offence in two days, by himſelf or ſervant, to a conſtable of the hundred, or the conſtable of the place in or near which the fact ſhall be committed; and within ten days after ſuch notice, giving in the examination on oath of himſelf, or of his ſervant preſent at the time of the fact, or having the care of ſuch his property, before a juſtice of the peace, whether he knows the perſons that committed the fact, or any of them; and if he confeſſes that he does, then the perſon ſo confeſſing, entring into recognizance to proſecute. 11 G. 2. c. 22. ſ. 5, 6.

But if an offender is convicted in 12 months, the hundred ſhall not be liable; and therefore the action muſt not be brought till after one year: nor ſhall it be commenced but within two years. ſ. 7, 8.

Note; It is proper here to take notice of a very odd miſtake in ſome of the books, relating to an act made in the 14 G. 2. c. 3. by reaſon of which act one author aſſerts, that the ſtatute laſt recited is of little uſe, becauſe that now by the ſaid ſtatute of 14 G. 2. *no corn can be exported:* and another ſays, that by the ſaid ſtatute of 14 G. 2. *no corn ſhall be exported after Dec.* 15. 1741. And the miſtake is no other than this; that inſtead of *after* Dec. 15. the ſtatute ſays, *before* Dec. 15. 1741, none ſhall be exported; and the reaſon was, becauſe at that time there was great ſcarcity of corn in the nation. To which may be added, that other books take no notice of either the one act or the other; perhaps from the above ſuppoſition, that the one act renders the other uſeleſs: by which it may ſeem, that the publiſhers of the new editions do not always bring down the alterations from the ſtatutes themſelves, but quote from one another.

V. Importation of corn.

Poundage on importation.

1. When corn doth not exceed the following prices, the cuſtom and poundage for corn imported ſhall be as follows: wheat not above 53 *s.* 4 *d.* a quarter, ſhall pay 16 *s.* if above 53 *s.* 4 *d.* and not

not above 4*l.* it ſhall pay 8*s.* rye not above 40*s.* a quarter, ſhall pay 16*s.* barley and malt not above 32*s.* a quarter, ſhall pay 16*s.* buck wheat not above 32*s.* a quarter, ſhall pay 16*s.* oats not above 16*s.* a quarter, ſhall pay 5*s.* 4*d.* peaſe or beans not above 40*s.* a quarter, ſhall pay 16*s.* 22 *C.* 2. *c.* 13. *ſ.* 1.

But when the prices exceed theſe rates, then the duties payable before this act, ſhall only be paid, *id. ſ.* 2. That is to ſay, for every quarter of wheat imported, 5*s.* 4*d.* of rye 4*s.* barley or malt 2*s.* 8*d.* buck wheat 2*s.* oats 1*s.* 4*d.* peaſe or beans 4*s.* 15 *C.* 2 *c.* 7. *ſ.* 3.

Price of corn how to be aſcertained.

2. And that it may be known what price corn bears where ſuch foreign corn is imported, the juſtices of the peace for the counties where foreign corn is imported, ſhall at every their quarter ſeſſions give in charge to the grand jury to make enquiry and preſentment upon their oaths, of the common market prices of the ſeveral ſorts of middling *Engliſh* corn, as the ſame ſhall be commonly bought and ſold in the county; which preſentment ſhall be certified by the juſtices to the chief officer and collector of the cuſtoms at the port where the corn is imported, to be hung up in ſome publick place in the cuſtom houſe. But this ſhall not extend to the city of *London*. 5 *G.* 2. *c.* 12. *ſ.* 1, 2, 3, 4.

Fraudulent importation.

3. And for preventing the fraudulent importation of foreign corn, no warrant ſhall be allowed for carrying forth to ſea, to any other port, any foreign corn after importation; and no perſon ſhall carry forth the ſame, or procure it to be ſhipped for that purpoſe, on pain of forfeiting the ſame, and alſo 20*s.* for every buſhel, and alſo the ſhip, with all her guns, tackle, and furniture; half to the king, and half to him who ſhall ſue in any court of record. And the maſter and mariners, knowingly aſſiſting therein, ſhall be impriſoned for three months. 5 *G.* 2. *c.* 12. *ſ.* 5.

A. Licence for a badger of corn.

Weſtmorland. AT *the general quarter ſeſſions of the peace held at* ——— *for the county aforeſaid, the* ——— *day of* ——— *We* A. B. C. D. *and* E. F. *eſquires, juſtices of the peace for the ſaid county (one whereof is of the* quorum) *have licenſed, and by theſe preſents do licenſe and admit* G. H. *of* ——— *being upwards of* 30 *years of age, and alſo being a married man, and an houſholder, and having been an inhabitant in the ſaid county, for three years laſt paſt, to be a common badger, carrier, buyer, and ſeller of corn and grain in any market or fair whatſoever, and the ſame to convert into meal, and to carry to, and vend the ſame in any fair or market, from time to time, and at all times for and during the ſpace of one whole year, from the date hereof; ſo as he do uſe and follow the ſaid buſineſs, according to the true intent and meaning of the ſtatutes in that caſe made and provided againſt regrators, foreſtallers, and ingroſſers, and not otherwiſe. Given under our hands and ſeals the day and year firſt abovewritten.*

B. Con-

B. Condition of the recognizance.

——— *that he ſhall not foreſtall, or ingroſs, or do any thing contrary to the true meaning of the ſtatutes made againſt regrators, foreſtallers, and ingroſſers, or any thing therein contained.*

Coroner.

CORONERS are ancient officers by the common law, ſo called becauſe they deal principally with the pleas of the crown, and were of old time the principal conſervators of the peace. 2 *Haw.* 42.

Concerning whom I ſhall ſhew,

I. Who may be a coroner.
II. How choſen.
III. His power and duty in taking an inquiſition of death.
IV. His power and duty in other matters.
V. His fees.
VI. Puniſhment for not doing his duty.

I. Who may be a coroner.

Dignity. 1. Of ancient time this office was of great eſtimation; for none could have it under the degree of a knight. 3 *Ed.* 1. *c.* 10. 4 *Inſt.* 271.

Eſtate. 2. And by the 14 *Ed.* 3. *ſt.* 1. *c.* 8. No coroner ſhall be choſen unleſs he have land in fee, ſufficient in the ſame county, whereof he may anſwer to all manner of people.

II. How choſen.

To be choſen in the county court. 1. The coroner (as of ancient time the ſheriffs and conſervators of the peace) ſhall be choſen in full county, that is, in the county court, by the commons of the ſame county. 28 *Ed.* 3. *c.* 6.

And this muſt be in purſuance of the king's writ for that purpoſe, iſſuing out of, and returnable into the chancery; and none but freeholders have a voice at ſuch election, for they only are ſuiters to the county court. 2 *Haw.* 43, 44.

County to anſwer for him. 2. And being elected by the county, if he be inſufficient, and not able to anſwer ſuch fines and other duties in reſpect of his office, as he ought; the county, as his ſuperior, ſhall anſwer for him. 2 *Inſt.* 175.

3. And

3. And being chosen by the county, his office continues, notwithstanding the demise of the king. 4 *Inst.* 271. Office not void by the king's death.

4. And after he is chosen, he shall be sworn, by the sheriff, for the due execution of his office. 2 *Hale's H.* 55. To be sworn.

5. But in the statute of 28 *Ed.* 3. which enacts that they shall be chosen by the county, there is a saving to the king and other lords, who ought to make coroners, their franchises. Others not chosen by the county.

6. The lord chief justice of the king's bench, by virtue of his office, is the chief coroner of *England*. 2 *H. H.* 53. Chief Justice.

III. His power and duty in taking an inquisition of death.

1. When it happens that any person comes to an unnatural death, the township shall give notice thereof to the coroner. Otherwise, if the body be interred before he come, the township shall be amerced. *Hale's Pl.* 170. Notice.

2. And by *Holt* Ch. J. It is a matter indictable to bury a man that dies a violent death, before the coroner's inquest hath sat upon him. 2 *Haw. Not.* 8. Burying without notice.

3. And if the township shall suffer the body to lie till putrefaction, without sending for him, they shall be amerced. *Hale's Pl.* 170. 2 *Haw.* 48. Lying unburied.

4. When notice is given to the coroner, he is to issue a precept to the constables of the four or six next townships, to return a competent number of good and lawful men of their townships, to appear before him in such a place, to make an inquisition touching that matter. 2 *H. H.* 59. Or he may send his precept to the constable of the hundred. *Wood* 848. Precept to summon a jury.

5. These are to be at least 12; and it is said, that all persons of the neighbouring towns, above the age of 12 years, are bound to attend at the taking the inquisition, unless they have a reasonable excuse to the contrary. 2 *Inst.* 148. 2 *Haw.* 54. Jury.

6. If the constables make not a return, or the jurors returned appear not, their defaults are to be returned to the coroner; and the constables or jurors in default shall be amerced before the judges of assize. 2 *H. H.* 59. Default in not appearing.

7. The jury appearing is to be sworn and charged by the coroner to enquire, upon the view of the body, how the party came by his death. 2 *H. H.* 60. Swearing and charge.

8. For he can take indictments of death, only upon view of the body, and not otherwise; therefore if the body be interred before he come, he must dig it up. And this he may do lawfully, within any convenient time, as in 14 days. *Hale's Pl.* 170. 2 *Haw.* 48. View of the body.

9. If the body cannot be viewed, the coroner can do nothing; but the justices of the peace shall inquire thereof. *Hale's Pl.* 170. 2 *Haw.* 48. Where the body cannot be viewed.

10. The jury being sworn, and the body upon view, he shall inquire upon the oaths of them, in this manner, by the statute of 4 *Ed.* 1. *st.* 2. called the statute *de officio coronatoris*; *viz.* Form of the charge, where a person is slain.

If they know where the perſon was ſlain; whether it were in any houſe, field, bed, tavern, or company:

Who are culpable, either of the act, or of the force; and who were preſent, either men or women, and of what age ſoever they be, if they can ſpeak, or have any diſcretion:

And how many ſoever be found culpable, they ſhall be taken and delivered to the ſheriff, and ſhall be committed to the gaol;

And ſuch as be found, and be not culpable, ſhall be attached until the coming of the judges of aſſize.

Where a perſon ſlain is found in the fields or woods.

11. And, by the ſame ſtatute, if it fortune any ſuch man be ſlain, which is found in the fields, or in the woods, firſt it is to be inquired, whether he was ſlain in the ſame place or not:

And if he were brought and laid there, they ſhall do ſo much as they can to follow their ſteps that brought the body thither, whether he were brought upon a horſe, or in a cart:

It ſhall be alſo inquired, if the dead perſon were known, or elſe a ſtranger, and where he lay the night before.

Wounds.

12. Alſo, by the ſame ſtatute, all wounds ought to be viewed, the length, breadth, and deepneſs; and with what weapons; and in what part of the body the wound or hurt is; and how many be culpable; and how many wounds there be; and who gave the wound.

Defendants evidence.

13. And they muſt hear evidence on all hands, if it be offered to them, and that upon oath, becauſe it is not ſo much an accuſation or an indictment, as an inquiſition or inqueſt of office. 2 *H. H.* 157.

To inquire of the murderer's lands and goods.

14. And by the aforeſaid ſtatute, if any be found culpable of the murder, the coroner ſhall immediately go to his houſe, and ſhall inquire what goods he hath, and what corn he hath in his graunge; and if he be a freeman, they ſhall inquire how much land he hath, and what it is worth yearly, and further, what corn he hath upon the ground: and likewiſe of his freehold, how much it is worth yearly, over and above the ſervice due to the lord of the fee; and the land ſhall remain in the king's hands, until the lords of the fee have made fine for it:

And when they have thus enquired upon every thing, they ſhall cauſe all the land, corn, and goods to be valued, in like manner as if they ſhould be ſold immediately; and thereupon they ſhall be delivered to the whole townſhip, which ſhall be anſwerable before the judges for all.

Perſons drowned or ſuddenly dead.

15. In like manner, by the ſaid ſtatute, it is to be inquired of them that be drowned, or ſuddenly dead, whether they were ſo drowned, or ſlain, or ſtrangled by the ſign of a cord tied ſtreight about their necks, or about any of their members, or upon any other hurt found upon their bodies. And if they were not ſlain, then ought the coroner to attach the finders, and all other in the company.

Flight.

16. He ſhall alſo inquire, whether the perſons found guilty, fled; for which flight they forfeit goods and chattels. 2 *Hawk.* 48, 53.

17. And if any perſon be ſlain or murdered in the day time, and the murderer eſcape untaken, the townſhip ſhall be amerced. 3 *H.* 7. *c.* 1. Townſhip. amerced for an eſcape.

18. Concerning horſes, boats, carts, and the like, whereby any are ſlain, which properly are called deodands, they alſo ſhall be valued, and delivered unto the towns as before. 4 *Ed.* 1. *ſt.* 2. Deodands.

19. All which things muſt be inrolled in the rolls of the coroner. 4 *Ed.* 1. *ſt.* 2. Coroner's rolls.

20. And the ſheriffs ſhall have counter rolls with the coroner, of things belonging to their office. 3 *Ed.* 1. *c.* 10. Sheriff's rolls.

21. But it is not neceſſary that the inquiſition be taken in the very ſame place where the body was viewed; but they may adjourn to a place more convenient. 2 *Hawk.* 48. Adjourning after view.

22. Immediately upon theſe things being inquired, the bodies of ſuch perſons being dead, or ſlain, ſhall be buried. 4 *Ed.* 1. *ſt.* 2. Burial.

23. By the 1 & 2 *P. & M. c.* 13. *ſ.* 5. Every coroner, upon any inquiſition before him found, whereby any perſon ſhall be indicted for murder or manſlaughter, or as acceſſary before the offence committed, ſhall put in writing the effect of the evidence given to the jury before him, being material; and ſhall bind over the witneſſes to the next general gaol delivery to give evidence; and ſhall certify the evidence, the recognizance, and the inquiſition or indictment before him taken and found, at or before the trial, on pain of being fined by the court. Certifying to the aſſizes.

By the expreſs words of which ſtatute, he may inquire of *acceſſaries before the fact*; but he cannot inquire of acceſſaries *after* the fact. 2 *Hawk.* 48.

24. He ought alſo to inquire of the death of all perſons who die in priſon; that it may be known, whether they died by violence, or any unreaſonable hardſhips: for if a priſoner, by the dureſs of the gaoler, comes to an untimely death, it is murder in the gaoler, and the law implies malice in reſpect of the cruelty. 3 *Inſt.* 52, 91. Perſons dying in gaol.

25. If the inquiſition ſhall be quaſhed in the court of king's bench, the coroner by leave of the court may take up the body again, and take a new inquiſition. *E.* 5 *G. K.* and *Saunders. Str.* 167. *M.* 9 *G.* Caſe of the coroner of *Wenlock. Str.* 533. Inquiſition quaſhed in the court of king's bench.

IV. His power and duty in other matters.

1. He ought to inquire of treaſure that is found; who were the finders, and likewiſe who is ſuſpected thereof; and that may well be perceived, where one liveth riotouſly, haunting taverns, and hath done ſo of long time: hereupon he may be attached for this ſuſpicion, by four, or ſix, or more pledges, if he may be found. 4 *Ed.* 1. *ſt.* 2. Treaſure trove.

2 Beſides his judicial place, he hath alſo an authority miniſterial as a ſheriff; namely, when there is juſt exception taken to the ſheriff, judicial proceſs ſhall be awarded to the coroner, for the execution of the king's writs: and in ſome ſpecial caſes, the Executing proceſs.

the king's original writ ſhall be immediately directed to him. 4 *Inſt.* 271.

Outlawry. 3. He is bound to be preſent in the county court, to pronounce judgment of outlawry upon the exigent, after *quinto exactus*, at the fifth court, if the defendant doth not appear. *Wood* 833.

Appeals. 4. He had anciently alſo a power in certain appeals, as of rape, and maim; which are now out of uſe.

V. His fees.

Fee of 13 s. 4 d. 1. By the ſtatute of 3 *H.* 7. *c.* 1. The coroner ſhall have for his fee, upon every inquiſition taken upon the view of the body ſlain, 13 *s.* 4 *d.* of the goods and chattels of him that is the ſlayer and murderer, if he have any goods; and if not, he ſhall have for his ſaid fee, of ſuch amerciaments as ſhall fortune any townſhip to be amerced for eſcape of ſuch murderer.

Fee of 20 s. and 9 d. a mile. 2. Moreover, by the 25 *G.* 2. *c.* 29. For every inquiſition (not taken upon view of a body dying in gaol) he ſhall have 20 *s.* and alſo 9 *d.* for every mile he ſhall be compelled to travel from his uſual place of abode to take ſuch inquiſition; to be paid by order of the juſtices in ſeſſions, out of the county rates; for which order no fee ſhall be paid. *ſ.* 1.

And for every inquiſition taken on view of a body dying in priſon, he ſhall be paid ſo much, not exceeding 20 *s.* as the juſtices in ſeſſions ſhall allow; to be paid in like manner. *ſ.* 2.

But no coroner of the king's houſhold, and of the verge of the king's palaces; nor any coroner of the admiralty; or of the county palatine of *Durham*; nor of the city of *London* and borough of *Southwark*, nor any franchiſes belonging to the ſaid city; nor of any city, town, or franchiſe, not contributing to the county rates, or within which ſuch rates have not been uſually aſſeſſed, ſhall be intitled to any benefit by this act; but they ſhall have ſuch fees and ſalaries as they were allowed before this act, or as ſhall be allowed by the perſons by whom they have been appointed. *ſ.* 5.

VI. His puniſhment for not doing his duty.

His puniſhment for neglect of duty. 1. Coroners concealing felonies, or not doing their duty thro' favour to the miſdoers, ſhall be impriſoned a year, and fined at the king's pleaſure. 3 *Ed.* 1. *c.* 9.

2. And by the 3 *H.* 7. *c.* 1. If any coroner be remiſs, and make not inquiſitions upon the view of the body dead, and certify the ſame to the gaol delivery; he ſhall forfeit to the king an hundred ſhillings.

3. And by the 25 *G.* 2. *c.* 29. If any coroner, not appointed by an annual election or nomination, or whoſe office is annexed to any other office, ſhall be convicted of extortion for taking more than his lawful fees, or of wilful neglect of his duty, or miſdemeanor in his office; the court may adjudge him to be amoved from

from his office; and thereupon, if he ſhall have been elected by the freeholders, a writ ſhall iſſue for the amoving him, and electing another in his ſtead; and if he hath been appointed by the lord of any liberty or franchiſe, or in any other manner than by the freeholders, the perſon intitled to nomination, ſhall on notice of ſuch judgment of amoval, nominate another perſon in his ſtead. *ſ.* 6.

4. And he ought to execute his office in perſon, and not by deputy; for he is a judicial officer. *Wood* 141. Otherwiſe it ſeemeth that he ſhall incur the aforeſaid penalties, for remiſſneſs or neglect of duty.

The coroner's precept to ſummon a jury.

Weſtmorland. { To the high conſtable of —— in the ſaid county.

THESE *are in the name of our ſovereign lord the king, to require you, immediately upon ſight hereof, to ſummon and warn* 24 *good and lawful men of the four next townſhips to* ——— *in the ſaid county, to be and appear before me* A. C. *gentleman, one of the coroners of the county aforeſaid, at* ——— *aforeſaid in the ſaid county, on the* ——— *day of* ——— *then and there to inquire of, do, and execute all ſuch things as on his majeſty's behalf ſhall be lawfully given them in charge. Whereof fail not, as you will anſwer the contrary at your peril. Given under my hand and ſeal, the* ——— *day of* ———.

The jurors oath on the coroner's inqueſt.

YOU *ſhall diligently inquire, and true preſentment make, on the behalf of our ſovereign lord the king, how and in what manner* A. D. (or, *a perſon unknown,* as the caſe is) *here lying dead, came to his death; and of ſuch other matters relating to the ſame as ſhall be lawfully required of you, according to your evidence: So help you god.*

After the foreman is ſworn, the reſt may be ſworn, three or four together, as follows;

Such oath as A. F. *the foreman of this inqueſt hath for his part taken, you and every of you ſhall well and truly obſerve and keep on your parts reſpectively: So help you god.*

Inquiſition of murder.

Weſtmorland. AN *inquiſition indented, taken at* ——— *in the county of* ——— *aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *before me* A. C. *gentleman, one of the coroners of our lord the king, for the county aforeſaid, upon the view of the body of* A. D. *then and there lying dead, upon the oaths of* A. B. C. D. E. F. *&c. good and lawful*

men of ——— aforesaid, and of three other of the next towns, to wit, K. L. *and* M. *in the said county, who being sworn and charged to inquire on the part of our said lord the king, when, where, how, and after what manner, the said* A. D. *came to his death, do say upon their oath, that one* A. M. *late of ——— aforesaid, gentleman, not having god before his eyes, but being moved and seduced by the instigation of the devil, on the ——— day of ——— in the ——— year of ——— aforesaid, at the first hour in the night of the same day, with force and arms, at ——— in the county aforesaid, in and upon the aforesaid* A. D. *then and there being in the peace of god and of the said lord the king, feloniously, voluntarily, and of his malice forethought, made an assault; and that the aforesaid* A. M. *then and there with a certain sword made of iron and steel, of the value of* 5 s. *which he the said* A. M. *then and there held in his right hand, the aforesaid* A. D. *in and upon the left part of the belly of the said* A. D. *a little above the navel of the said* A. D. *then and there violently, feloniously, voluntarily, and of his malice forethought, struck and pierced, and gave to the said* A. D. *then and there with the sword aforesaid, in and upon the aforesaid left part of the belly of the said* A. D. *a little above the navel of the said* A. D. *one mortal wound of the breadth of half an inch, and of the depth of three inches, of which said mortal wound the aforesaid* A. D. *then and there instantly died; and so the said* A. M. *then and there felonionsly killed and murdered the said* A. D. *against the peace of our said lord the king, his crown and dignity.*

And the said jurors further say, upon their oath aforesaid, that A. A. *of ——— yeoman, and* B. A. *of ——— yeoman, were feloniously present with drawn swords, at the time of the felony and murder aforesaid in form aforesaid committed, that is to say, on the said ——— day of ——— in the ——— year aforesaid, at ——— aforesaid in the county aforesaid, at the first hour in the night of the said day, then and there comforting, abetting, and aiding the said* A. M. *to do and commit the felony and murder aforesaid in manner aforesaid, against the peace of our said lord the king, his crown and dignity.*

And moreover, the jurors aforesaid, upon their oath aforesaid, do say, that the said A. M. A. A. *and* B. A. *had not, nor any of them had, nor as yet have or hath any goods or chattels, lands or tenements, within the county aforesaid, or elsewhere, to the knowledge of the said jurors.*

In witness whereof, as well the aforesaid coroner, as the jurors aforesaid, have to this inquisition put their seals, on the day and year aforesaid, and at the place aforesaid.

A. C. *Coroner.*

A. B.
C. D.
E. F. *&c. jurors.*

An inquisition where one hangs himself.

——— As above to ——— *not having god before his eyes, but being seduced and moved by the instigation of the devil, at ——— aforesaid, in a certain wood at ——— aforesaid standing and being,*

being, the ſaid A. D. *being then and there alone, with a certain hempen cord of the value of* 3 d. *which he then and there had and held in his hands, and one end thereof he then and there put about his neck, and the other end thereof he tied about a bough of a certain oak tree, and himſelf then and there, with the cord aforeſaid, voluntarily and felonioufly, and of his malice forethought, hanged and ſuffocated; and ſo the jurors aforeſaid, upon their oath aforeſaid ſay, that the ſaid* A. D. *then and there in manner and form aforeſaid, as a felon of himſelf, felonioufly, voluntarily, and of his malice forethought, himſelf killed, ſtrangled, and murdered, againſt the peace* &c.

An inquiſition where one drowns himſelf.

——— *at* ——— *aforeſaid, in the county aforeſaid, then and there being alone, in a common river there, called* ——— *himſelf voluntarily and felonioufly drowned; And ſo the jurors aforeſaid, upon their oath aforeſaid ſay, that the aforeſaid* A. D. *in manner and form aforeſaid, then and there himſelf voluntarily and felonioufly as a felon of himſelf killed and murdered; againſt the peace* ———.

An inquiſition upon one who dies in gaol.

——— *who ſay upon their oath, that the aforeſaid* A. D. *on the day of the taking of this inquiſition, being a priſoner in the gaol at* ——— *in the county aforeſaid, then and there died of the viſitation of god, and then and there in manner and form aforeſaid came to his death, and not otherwiſe. In witneſs* &c.

An inquiſition on one *non compos mentis.*

——— *who ſay upon their oath, that the aforeſaid* A. D. *on the day and year aforeſaid, and at the time of his death, to wit, from the* ——— *day of* ——— *to the time of his death, and at the time of his death aforeſaid, was a lunatick, and a perſon of inſane mind; and that the ſaid* A. D. *being a lunatick and a perſon of inſane mind as aforeſaid, did on the* ——— *day of* ——— *come alone to a certain river, called* ——— *in the ſaid county, and did then and there caſt himſelf into the ſaid river, and drowned himſelf in the water of the ſaid river. And ſo the jurors aforeſaid, upon their oath aforeſaid ſay, that the aforeſaid* A. D. *from the cauſe aforeſaid, in manner and form aforeſaid, came to his death, and not otherwiſe. In witneſs* &c.

An inquiſition on one for cutting his throat.

——— *by the inſtigation of the devil, at* ——— *aforeſaid in the county aforeſaid, in and upon himſelf, then and there being in the peace of god and of the ſaid lord the king, felonioufly, voluntarily, and of his malice forethought, made an aſſault; and that the aforeſaid* A. D. *then and there with a certain knife, of the value of*

one penny, which he the ſaid A. D. *then and there held in his right hand, himſelf upon his throat then and there feloniouſly, voluntarily, and of his malice forethought did ſtrike, and gave to himſelf then and there with the knife aforeſaid, upon his throat aforeſaid, one mortal wound, of the breadth of four inches, and the depth of one inch, of which ſaid mortal wound the ſaid* A. D. *at ——— aforeſaid in the county aforeſaid languiſhed, and languiſhing lived, from the ſaid ——— day of ——— in the ——— year aforeſaid, to the ——— day of ——— and that the ſaid* A. D. *on the ——— day of ——— aforeſaid, in the ——— year aforeſaid, at ——— aforeſaid, in the county aforeſaid, of that mortal wound died. And ſo the jurors aforeſaid* &c.

For killing another in his own defence.

——— upon their oaths ſay, that A. K. *late of ——— gentleman, at ——— aforeſaid in the ſaid county, on the ——— day of ——— in the ——— year of ——— in the peace of god and of our ſaid lord the king then being,* A. M. *late of ——— in the county of ——— at the hour of ——— in the afternoon of the ſame day, did come, and upon him the ſaid* A. K. *then and there of his malice forethought did make an aſſault, and him the ſaid* A. K. *did then and there endeavour to beat and kill, by continuing the aſſault aforeſaid, from the houſe of one* W. H. *in ——— aforeſaid to a certain place called ——— in the county aforeſaid, and the ſaid* A. K. *ſeeing that the ſaid* A. M. *was ſo maliciouſly diſpoſed, to a certain wall in the ſaid place, called ——— did flee, and from thence for fear of death could not eſcape, and ſo the ſaid* A. K. *himſelf, in preſervation of his life, againſt the ſaid* A. M. *continued to defend, and in his own defence him the ſaid* A. M. *upon the right part of the breaſt of him the ſaid* A. M. *with a certain ſword of the price of one ſhilling, which the ſaid* A. K. *then and there held in his right hand, did ſtrike, then and there giving to the ſaid* A. M. *one mortal wound, of the breadth of one inch and of the depth of three inches, of which ſaid mortal wound the ſaid* A. M. *at ——— aforeſaid in the county aforeſaid languiſhed, and languiſhing lived from the ſaid ——— day of ——— to the ——— day of ——— from thence next enſuing, and that the ſaid* A. M. *on the ſaid ——— day of ——— in the ——— year aforeſaid, at ——— aforeſaid in the ſaid county, of that mortal wound died; And ſo the ſaid* A. K. *did then and there kill him the ſaid* A. M. *in his own defence.*

An inquiſition where the murderer is unknown.

——— The ſame as before, only ſay ——— *that a certain perſon unknown* &c. and add ——— *And the ſaid jurors upon their oath aforeſaid further ſay, that the ſaid perſon unknown, after he had committed the ſaid felony and murder in manner aforeſaid, did fly away: Againſt the peace* &c.

Cottage.

A Cottage (Sax. *Cote*) is a little houſe for habitation, without any land belonging to it. *Wood* 763.

By the 31 El. c. 7. *No perſon ſhall build any cottage for habitation, nor convert any building to be uſed as a cottage for habitation, unleſs he lay to the ſame four acres of ground at the leaſt, according to the ſtatute or ordinance* de terris menſurandis, *being his own freehold or inheritance lying near to the ſaid cottage, to be continually occupied and manured therewith, ſo long as the ſame cottage ſhall be inhabited; on pain of* 10l. *to the king.* ſ. 1.

And *every perſon who ſhall uphold and continue any ſuch cottage, to be erected or converted for habitation, whereunto four acres ſhall not be laid to be occupied therewith, ſhall forfeit to the king* 40s. *for every month.* ſ. 2.

And *there ſhall not be any inmate, or more families than one, dwelling in any one cottage; on pain that the owner or occupier ſhall forfeit to the lord of the leet* 10s. *a month, who on preſentment may levy the ſame by diſtreſs, or ſue for it in any court of record.* ſ. 3.

And the juſtices of aſſize, juſtices of the peace in ſeſſions, and every lord within his leet, and no others, may hear and determine all offences againſt this act, by indictment, or by preſentment, or information, and award execution by fieri facias, elegit, capias, *or otherwiſe.* ſ. 4.

But this act ſhall not extend to any cottage in any city, town corporate, or ancient borough, or market town; nor to any cottages for workmen only, in any mineral works, coal mines, quarries, or delfs of ſtone or ſlate, or in making brick, tile, lime, or coals, ſo as they be not above one mile diſtant from the place of working. ſ. 5.

Alſo this ſhall not extend to any cottage within a mile of the ſea, or on the ſide of a navigable river where the admiral ought to have juriſdiction, ſo long as no perſon ſhall inhabit therein, but a ſailor, or man of manual occupation for furniſhing any ſhip or veſſel; nor to any cottage to be made in any foreſt, chaſe, warren, or park, ſo long as no other perſon ſhall therein inhabit, but an under keeper or warrener; nor to any cottage heretofore made, ſo long as no other perſon ſhall therein inhabit, but a common herdman or ſhepherd, for keeping the cattle or ſheep of the town, or a poor, lame, ſick, aged, or impotent perſon; nor to any cottage to be made, which for any juſt reſpect, on complaint to the aſſizes or ſeſſions, ſhall by their order be decreed to continue for habitation, ſo long only as by ſuch decree ſhall be limited. ſ. 6.

And by the 43 *El.* c. 2. *The churchwardens and overſeers, by conſent of the lord of the manor, may erect cottages on the waſtes and commons, for the habitation of the poor, but for no other purpoſe.* ſ. 5.

Cottage.

No perſon ſhall build any cottage for habitation] An indictment for erecting a cottage contrary to the ſtatute, was quaſhed; becauſe it was not ſaid that any inhabited it: for if it was not inhabited, it was no offence. 1 *Ventr.* 107.

According to the ſtatute or ordinance de terris menſurandis] That is, after 16½ foot to the pole. 2 *Inſt.* 737.

Being his own freehold or inheritance] Therefore neither grounds holden by copy, or for life or lives, or for any number of years will ſerve: and it muſt be freehold, either in fee ſimple, or fee tail. 2 *Inſt.* 737.

Juſtices of aſſize, juſtices of the peace in ſeſſions, and every lord within his leet] So that there is a concurrent power in every of theſe three; and the judgment of ſuch one of them as doth firſt enquire of, hear, and determine the ſame, ſhall ſtand. 2 *Inſt.* 739.

Nor to any cottage heretofore made] That is, erected before the making of this act.

Finally, Lord *Coke* obſerving upon this act of the 31 *El.* ſays, The inconveniences that grow by unlawful cottages againſt this ſtatute are great; being neſts to hatch idleneſs, the mother of pickings, thieveries, ſtealing of wood, and the like; tending alſo to the prejudice of lawful commoners, for that new erected cottages within the memory of man, tho' they have four acres of ground, or more, laid to them, according to this act, ought not to common in the waſtes of the lord; but the greateſt inconvenience of all is, the ill breeding and educating of youth; which inconveniences may be eaſily helped and remedied, by the proviſions of this excellent law, if lords of leets and their ſtewards would look to the execution of this act, which (he ſays) he holds to be the readieſt means; for albeit the cottage erected, or converted, cannot by any proviſion in this ſtatute be demoliſhed, or pulled down, yet the execution of the penalty of this act will make it uninhabitable, and work the deſired effect. And they may alſo be amerced, for wrongful commoning, in the court baron. 2 *Inſt.* 740.

Counterfeit. See Coin, Cheat, Forgery.

County court.

County.

1. ANCIENTLY, the *comites*, *counts*, or *earls*, had the government of the counties; and afterwards the *vicecomites* or *ſheriffs*. And the *county* ſeemeth to be nothing elſe, but the diſtrict of the *comes* or *count*. *Shire* is a *Saxon* word, from *ſcyran*, to ſhare or divide, for that the ſhires or counties are divided

divided by certain metes and bounds from each other. And the *ſheriff*, in *Saxon ſcyregereſa*, is the *reve*, *gràve*, or governor of the *ſhire*; wherein he hath great power, being therein the chief officer under the king.

2. The ſheriff holdeth in his county two courts; the *torn*, and the *county court*: The *torn* is the king's court of record, for criminal cauſes, and for redreſſing of common grievances within the county; the *county court* is not a court of record, but only a court baron, for civil cauſes, and this is the court of the ſheriff himſelf. County court.

3. By the 2 & 3 *Ed.* 6. *c.* 25. No county court ſhall be longer deferred than one month from court to court, ſo that the county court ſhall be kept every month, and not otherwiſe. When to be holden.

And this is to be accounted 28 days to the month, and not according to the month of the kalendar. 2 *Inſt.* 71.

4. It may be kept at any place within the county, unleſs reſtrained by ſtatute. *Wood* 832. Where to be kept.

5. The ſuitors, that is, the freeholders, are the judges in this court; except that in re-diſſeiſin, by the ſtatute of *Merton*, the ſheriff is judge. And by the ſtatutes concerning parliamentary elections, he is judge at the election of knights; for he muſt make a true return at his peril. *Barl. County Court.* How far the ſheriff is judge.

6. This court ſhall hold pleas betwixt party and party, where the debt or damage is under 40*s.* 4 *Inſt.* 266. Of what ſum this court hath cognizance.

But in a *replevin*, the ſum may be above 40*s.* 4 *Inſt.* 266.

7. Alſo it hath not cognizance of treſpaſs *vi & armis*, becauſe a fine is thereby due to the king, which it cannot impoſe. 4 *Inſt.* 266. Of what offences this court hath cognizance.

8. And by the 11 *H.* 7. *c.* 15. No plaint ſhall be entred in the county court, but where the plaintiff or his attorney is preſent; and the plaintiff ſhall find pledges to purſue his plaint; and he ſhall have but one plaint for one treſpaſs or contract; on pain of 40*s.* half to the king, and half to the proſecutor. And one juſtice may examine the ſheriff or other officer, making default; and ſhall, within a quarter of a year, certify the examination into the exchequer. One plaint for one treſpaſs or contract.

But as to the pledges abovementioned, they are now diſuſed in this court; and were formerly uſed only in caſes where the plaintiff lived out of the county. *Greenw.* 11. *Read. County C.*

9. But by virtue of a writ of *juſticies*, the court may hold plea of treſpaſs *vi & armis*, and of any ſum, or of all actions perſonal above 40*s.* For this writ is in the nature of a commiſſion to the ſheriff, and is *vicontiel*, that is, belongs to the ſheriff, and is triable in the county court, and is not returnable. 4 *Inſt.* 266. Writ of juſticies.

10. By the 12 *G.* 2. *c.* 13. *ſ.* 7. If any perſon ſhall commence or defend any action, or ſue out any writ, proceſs, or ſummons, or carry on any proceedings in the county court, who ſhall not be admitted attorney or ſolicitor according to the act of 2 *G.* 2. *c.* 23. he ſhall forfeit 20*l.* with coſts, to him who ſhall ſue in any court of record. Who ſhall act attorney in the court.

Which ſaid act of 2 G. 2. hath continuance by the 22 G. 2. c. 46. to *June* 24. 1757, &c.

Summons. 11. The plaintiff in this court firſt takes out a ſummons, returnable at the next county court; and if the defendant do not appear, an attachment or *diſtringas* is to be made out: but if the defendant appears, the plaintiff is to file his declaration, ſhewing his cauſe of action, or matter of complaint, in what manner the action accrued, at what time and place the wrong was done, and the damage he hath ſuſtained. *Greenw.* 11. *Read. County C.*

Declaration. 12. If the defendant doth appear, and the next court after gives a rule to declare, and the plaintiff doth not file his declaration within the time, he may be nonſuited. *id.*

Continuance. 13. When the plaintiff hath declared, he muſt continue his ſuit from court day to court day, otherwiſe the defendant may take advantage of it; and this is called a continuance, being an adjourning of the ſuit from time to time, to keep it on foot. *id.*

Dies datus. 14. The rule, or *dies datus*, is when farther day is given to the plaintiff to declare, or to the defendant to plead; and the time given is uſually to the next court day, but upon occaſion may be inlarged. *id.*

Anſwer. 15. The next court after filing the declaration, and imparlance given, the defendant is to put in his anſwer or plea, and if the plaintiff join iſſue, they may proceed to trial the next court day, if they proceed not farther by replication, rejoinder, ſurrejonder, and the like. *id.*

Plea of freehold. 16. But if freehold is pleaded by the defendant, this court can proceed no further, for freehold ſhall never be tried without writ; therefore the cauſe muſt be removed: as when a defendant avoweth for damage feaſant, and the plaintiff juſtifieth by reaſon of common of paſture. *Wood* 833.

Judgment and diſtreſs. 17. Where a verdict is given for the plaintiff, and judgment entred thereupon, a *fieri facias* may be awarded againſt the defendant's goods, which may be taken by virtue thereof, and appraiſed and ſold, to ſatisfy the plaintiff; but if the defendant hath no goods whereupon to levy, the plaintiff remains without remedy in this court, for it being no court of record, no *capias* lies there; but an action may be brought at common law upon the judgment entred. *Greenw.* 22. *Read. County C.*

Removal by recordare. 18. Cauſes are removed out of this court, by a writ of *recordare*, which iſſues out of the chancery, directed to the ſheriff, commanding him to ſend the plaint that is before him in his county court (without writ of *juſticies*) into the court of king's bench, or common pleas, to the end the cauſe may be there determined. And the ſheriff is hereupon to ſummon the other party to be in that court (into which the plaint is to be ſent) at a day certain. And of all this he is to make a certificate under his own ſeal, and the ſeals of four ſuitors of the ſame court. *Read. County C.*

Removal by pone. 19. Cauſes are alſo removed by *pone*, which differs in nothing from a *recordare*, but that it removes ſuch ſuits as are before the ſheriff by writ of *juſticies*, and a *recordare* is to remove the ſuit that is by plaint only, without writ. *id.*

20. And

20. And altho' the plea be diſcontinued in the county, yet the plaintiff or defendant may remove the plaint into the common pleas or king's bench, and it ſhall be good, and he ſhall declare upon the ſame. *id.* Removal after diſcontinuance.

21. In this court, after the *quinto exactus*, the coroner gives judgment of outlawry. 4 *Inſt.* 266. Outlawry pronounced.

22. Out of the county court is derived the hundred court, for the eaſe of the ſubject; and it hath like juriſdiction as the county court, and may be held every three weeks. 2 *Inſt.* 71. Hundred court.

County rate.

1. THE ſeveral rates hereafter following, in order to avoid the inconveniences of ſeparate collections, ſhall for the future be levied and raiſed by one general county rate; Several rates thrown into one general county rate.

That is to ſay,

(1) For repairing county bridges, and highways thereto adjoining, and ſalaries for the ſurveyors of bridges; as directed by the 22 *H.* 8. *c.* 5. and 1 *An. ſt.* 1. *c.* 18.

(2) For building and repairing county gaols; by 11 & 12 *W.* *c.* 19.

(3) For the maſter of the houſe of correction his ſalary, and relieving the weak and ſick in his cuſtody; by the 7 *J.* *c.* 4.

(4) For relief of the priſoners in the king's bench and marſhalſea priſons, and of poor hoſpitals in the county, and of thoſe that ſhall ſuſtain loſſes by fire, water, the ſea, or other caſualties, and other charitable purpoſes for relief of the poor; by the 43 *El.* *c.* 2.

(5) For relief of priſoners in the county gaol; by 14 *El.* *c.* 5.

(6) For ſetting priſoners on work; by the 19 *C.* 2. *c.* 4.

All which ſaid ſix diſtinct rates (and that for vagrants by the 11 *An.* now repealed) are incorporated into one general county rate, by the 12 *G.* 2. *c.* 29. And by the ſaid ſtatute, and other ſubſequent ſtatutes, theſe other following charges are likewiſe directed to be paid out of the ſaid general county rate; to wit,

(7) The treaſurer's ſalary; by the 12 *G.* 2. *c.* 29.

(8) Charges attending the removal of any the ſaid general county rates by *certiorari*; by the 12 *G.* 2. *c.* 29.

(9) Money for purchaſing lands at the ends of county bridges; by the 14 *G.* 2. *c.* 33.

(10) Charges of building or repairing houſes of correction, and for fitting up and furniſhing the ſame, and employing the perſons ſent thither; by the 17 *G.* 2. *c.* 5. *ſ.* 33.

(11) Charges of apprehending, conveying and maintaining rogues and vagabonds; by the 17 *G.* 2. *c.* 5.

(12) Charges of the ſoldiers carriages, over and above the officers pay for the ſame, by the ſeveral yearly acts againſt mutiny and deſertion.

(13) The

(13) The coroner's fee of 9*d.* a mile for travelling to take an inquiſition, and 20*s.* for taking it; by the 25 *G.* 2. *c.* 29.

(14) Charges of carrying perſons to the gaol, or houſe of correction; by the 27 *G.* 2. *c.* 3.

(15) Charges of proſecuting and convicting felons; by the 25 *G.* 2. *c.* 36. and 27 *G.* 2. *c.* 3.

(16) Charges of proſecuting and convicting perſons plundering ſhipwrecked goods; by the 26 *G.* 2. *c.* 19.

To which may be added theſe following, by former ſtatutes; *viz.*

(17) By the 6 *G.* *c.* 23. The charges of tranſporting felons are directed to be paid by the treaſurer out of the county ſtock; which is now the ſame in effect, as to charge it upon the general county rate; ſince there can be no county ſtock in the treaſurer's hands but that.

(18) Charges of bringing inſolvent debtors to the aſſizes, in order to their diſcharge, if themſelves are not able to pay; by the 3 *G.* 2. *c.* 27.

(19) Charges of carrying pariſh apprentices, bound to the ſea ſervice, to the port to which the maſter belongeth; by the 2 & 3 *An.* *c.* 6.

Seſſions to lay the rate.

2. And that the ſame may be collected with as much eaſe, and as little expence as poſſible, the juſtices at their general or quarter ſeſſions, or the greater part of them, ſhall have power to make one general rate to anſwer all the purpoſes aforeſaid. 12 *G.* 2. *c.* 29. *ſ.* 1.

Which rate ſhall be aſſeſſed in ſuch proportions, in every pariſh or place, *as any of the rates by the ſaid ſeveral former acts have been uſually aſſeſſed.* id.

By which laſt words reference being made to the former acts, as to the manner of proportioning the rate, it is proper to inſert here, how the caſe ſtands upon the ſaid former acts, as to ſuch laying of the aſſeſſment; and it is thus:

(1) By the abovementioned act of the 22 *H.* 8. (in regard to *bridges*) the juſtices were to rate every inhabitant within their juriſdiction, in ſuch reaſonable ſum, as they ſhould think convenient. And by the 1 *An.* *ſt.* 1. *c.* 18. Every town, pariſh, or place was to be aſſeſſed, as they uſually had been aſſeſſed towards the repair of bridges.

(2) By the 14 *El.* *c.* 5. (for *relief of priſoners*) the juſtices were to rate every pariſh at ſuch reaſonable ſums as they ſhould think convenient.

(3) By the 43 *El.* *c.* 2. (for *hoſpitals and the marſhalſea*) the ſame was to be rateably aſſeſſed upon every pariſh.

(4) By the 7 *J.* *c.* 4. (for the *maſter of the houſe of correction his ſalary*) the ſame was to be rated, as for hoſpitals and the marſhalſea, by the 43 *El.* *c.* 2.

(5) By the 19 *G.* 2. *c.* 4. (for *ſetting priſoners on work*) to be raiſed as other county charges.

(6) By the 11 & 12 *W.* *c.* 19. (for *repairing gaols*) to be aſſeſſed by the juſtices in equal proportions, on every hundred, ward, or other diviſion.

(7) And

(7) And for *vagrants* (by the 12 *An.* now repealed) the money was to be raiſed as for bridges and gaols.

So that upon the whole, here ſeems to be intended an equal, proportionable rate, upon every diviſion.

Places exempted from part of the rate.

3. And where any perſon, liberty, diviſion, or place hath uſually contributed, or is liable to pay, only to one or more of, and not to all the rates hereby intended to be raiſed, and thrown into one general rate; the juſtices at their general or quarter ſeſſions may order and aſcertain, what proportion thereof ſhall be aſſeſſed on, and paid by ſuch perſon, liberty, diviſion, or place. 12 *G.* 2. *c.* 29. *ſ.* 5.

As for inſtance, where by the ſtatute of 22 *H.* 8. *c.* 5. towns corporate are charged for the repairing of bridges within their reſpective liberties; and the counties, for the bridges out of ſuch liberties; in ſuch caſe, a town corporate ought not to be charged towards the bridges in the county at large; and conſequently ought to have an abatement in the rate charged upon them, in ſuch proportion as the expence of bridges is to the whole expence of the ſeveral articles charged upon the ſaid general county rate; as if the expence of bridges be a tenth part of the whole expence chargeable upon the county rate, then ſuch town corporate ſhall have an abatement of one ſhilling for every ten, which it would otherwiſe be charged with in ſuch rate.

Places exempted from the whole rate.

4. And by the 13 *G.* 2. *c.* 18. *ſ.* 7. Where any liberties or franchiſes have commiſſions within themſelves, and are not ſubject to the county juſtices, and do not, nor did before the 12 *G.* 2. contribute to the county rates; the juſtices within ſuch liberties may exerciſe the ſame powers within their liberties, as juſtices in their counties.

High conſtable to make demand.

5. Which ſaid rates the high conſtables ſhall, at ſuch times as the ſaid juſtices by their order in ſeſſions ſhall direct, demand of the churchwardens and overſeers; which demand ſhall be made in writing (A) and given to them, or any of them, or left at their dwelling houſes, or affixed on the church doors, by the ſaid high conſtables. 12 *G.* 2. *c.* 29. *ſ.* 2.

Overſeers to pay.

6. Whereupon the ſaid churchwardens and overſeers ſhall, in 30 days after ſuch demand made, out of the money collected for relief of the poor, pay the ſums ſo aſſeſſed on each pariſh or place. 12 *G.* 2. *c.* 29. *ſ.* 2.

To be levied by diſtreſs.

7. And if the churchwardens or overſeers, or any of them, ſhall neglect or refuſe ſo to pay, the high conſtable ſhall levy the ſame by diſtreſs and ſale of the goods of ſuch churchwardens or overſeers ſo refuſing or neglecting, by warrant of two or more juſtices reſiding in or near ſuch pariſh or place. 12 *G.* 2. *c.* 29. *ſ.* 2.

High conſtable's receipt.

8. And the receipt of ſuch high conſtable ſhall be a full diſcharge to the churchwardens and overſeers, or other perſon paying the ſame. 12 *G.* 2. *c.* 29. *ſ.* 2.

Caſe where there is no poor rate.

9. Where there is no poor rate, the juſtices, in their general or quarter ſeſſions, ſhall by their order direct the ſum aſſeſſed on ſuch pariſh, townſhip, or place, to be rated and levied by the petty conſtable, or other peace officer, *as money for relief of the poor*

poor is by law to be rated or levied: Which ſum ſo rated and levied ſhall be paid by him to the high conſtable, and ſhall be demanded of, paid by, or levied on ſuch petty conſtable, in the ſame manner as before of the churchwardens and overſeers. And if any petty conſtable ſhall pay ſuch ſum before he hath collected it, he may afterwards rate and levy the ſame, or may be allowed and reimburſed the ſame, out of any conſtable's or other rate, which the juſtices in their ſeſſions ſhall order and direct. 12 G. 2. c. 29. ſ. 3.

As money for relief of the poor is to be rated or levied] That is to ſay, by taxation of every inhabitant, parſon, vicar, and other, and of every occupier of lands, houſes, tithes, coal mines, or ſaleable underwoods. 43 *El.* c. 2. ſ. 1.

Northern counties.

10. And whereas it will be inconvenient to many towns, pariſhes, and places, in the counties of *York*, *Derby*, *Durham*, *Lancaſter*, *Cheſter*, *Weſtmorland*, *Cumberland*, and *Northumberland*, that the ſaid rates ſhould be paid out of the poor rate, the juſtices at their general or quarter ſeſſions, *if they ſhall think convenient*, may order the ſum aſſeſſed on any ſuch town, pariſh, or place, to be paid by and levied on the petty conſtable (B), in ſuch manner as is above directed, in caſes where no rate is made for the poor. 12 G. 2. c. 29. ſ. 4.

If they ſhall think convenient] By which words, the juſtices in thoſe counties may order the rate to be paid by either of the two methods before mentioned, according to their diſcretions; that is to ſay, either by the churchwardens and overſeers out of the poor rate; or by the petty conſtables by an aſſeſſment after the manner of the poor rate. And the reaſon of this clauſe ſeems to be, becauſe ſome pariſhes in the northern counties being very large, and for that reaſon ſubdivided into ſeveral townſhips with regard to the poor, it may happen that ſome townſhips in the ſame pariſh may be high rated, and others low rated, towards the relief of their poor; therefore if a general ſum for the county rate upon the whole pariſh, were to be charged upon all the inhabitants, in proportion to their poor rate, it would lay the burden very unequally. To remedy which, the juſtices by this clauſe may charge ſeparately ſuch ſum as they ſhall think reaſonable, upon each ſubdiviſion or conſtablewick, in order to lay the ſame equally throughout the pariſh: and if any townſhip ſhall be aggrieved thereby, they may appeal as hereafter is directed, or remove it by *certiorari*.

High conſtable to pay to the treaſurer.

11. The ſaid high conſtables, at or before the next ſeſſions reſpectively after they have received the money, ſhall pay the ſame to the treaſurer; and the money ſo paid, ſhall be deemed the publick ſtock. 12 G. 2. c. 29. ſ. 6.

Treaſurer's receipt.

12. And the treaſurer's receipt ſhall be a ſufficient diſcharge to the high conſtable. 12 G. 2. c. 29. ſ. 9.

High conſtable to account.

13. And the ſaid high conſtables ſhall deliver in a true account on oath (if required) of the money by them received, before the ſaid juſtices at their general or quarter ſeſſions: And if any ſuch high conſtable ſhall neglect or refuſe to demand or levy as aforeſaid,

ſaid, or to account, the ſaid juſtices at their general or quarter ſeſſions may commit him to the common gaol, until he ſhall have cauſed ſuch rates to be demanded and levied, and ſhall have rendred a true account. And if it ſhall appear by ſuch account, that any ſum is remaining in his hands, and he ſhall not pay over the ſame to the treaſurer, they may commit him till he pay the ſame. 12 *G.* 2. *c.* 29. *ſ.* 8.

Petty conſtables and others to account.

14. And the juſtices, at their general or quarter ſeſſions, may oblige by their order, the petty conſtables or any other perſon impowered to levy, collect, or receive any ſum for the purpoſes aforeſaid, and who have any ſum in their hands, to account and pay over the ſame, in like manner as the high conſtables. 12 *G.* 2. *c.* 29. *ſ.* 17.

Treaſurer's diſburſements.

15. And the treaſurer ſhall pay ſo much of the money in his hands, to ſuch perſons, as the juſtices in ſeſſions ſhall by their order from time to time appoint, for the uſes and purpoſes of the ſaid abovementioned acts, and for any other uſes and purpoſes to which the publick ſtock of any county, city, diviſion, or liberty, is or ſhall be applicable 12 *G.* 2. *c.* 29. *ſ.* 6

Treaſurer's account.

16. And the treaſurer ſhall keep a book of entries, of the ſums by him received and paid; and ſhall deliver in a true account on oath if required, of his receipts and diſburſements, to the juſtices at every general or quarter ſeſſions, and alſo the proper vouchers for the ſame, to be kept amongſt the records of the ſeſſions. 12 *G.* 2. *c.* 29. *ſ.* 7, 8.

Seſſions order a diſcharge to the treaſurer.

17. And the diſcharge of the ſaid juſtices, by their order at their general or quarter ſeſſions, ſhall be a ſufficient diſcharge to the treaſurer. 12 *G.* 2. *c.* 29. *ſ.* 9.

New rate when to be made.

18. And no new rate ſhall be made, until it appear, by the treaſurer's accounts, or otherwiſe, that three fourths of the money collected have been expended for the purpoſes aforeſaid. 12 *G.* 2. *c.* 29. *ſ.* 10.

Appeal.

19. If the churchwardens and overſeers of any pariſh or place, ſhall think ſuch pariſh or place is over rated, they may appeal to the next general or quarter ſeſſions, againſt ſuch part of the rate only as may affect ſuch pariſhes or places: but ſuch rate, upon the appeal, ſhall not be quaſhed in regard to any other pariſhes or places. 12 *G.* 2. *c.* 29. *ſ.* 12.

Certiorari.

20. No *certiorari* to remove any rates, or any orders or other proceedings of the ſeſſions touching ſuch rates, ſhall be granted but upon motion the firſt week of the next term after the time for appealing from ſuch rates or orders is expired; and on making it appear to the court by affidavit or otherwiſe, that the merits of the queſtion on ſuch appeal or orders, will by ſuch removal come properly in judgment. And no ſuch *certiorari* ſhall be allowed, until ſufficient ſecurity be given to the treaſurer, in the ſum of 100*l.* to proſecute the *certiorari* with effect, and to pay the coſts if the rates or orders ſhall be confirmed. Nor ſhall any ſuch rates, orders, or proceedings be quaſhed for want of form only. 12 *G.* 2. *c.* 29. *ſ.* 21.

And no action ſhall be commenced againſt any perſon who ſhall have collected or received any money, or any rate which ſhall

ſhall be quaſhed on a *certiorari*, or otherwiſe, for any money collected or received on ſuch rate before the *certiorari* was brought; but the perſons who have paid on ſuch rate more than they ought to have paid, ſhall be repaid, or have the ſame allowed in the next rate. 12 G. 2. *c.* 29. *ſ.* 18.

A. High conſtable's warrant to levy the rate.

Weſtmorland, Kendal ward. { To the churchwardens and overſeers of the poor of the townſhip [*or* pariſh] of ——— in the ſaid county.

BY virtue of an order of his majeſty's juſtices of the peace in and for the ſaid county, in their general quarter ſeſſions aſſembled, you are hereby required in thirty days time from your receipt of this precept, or otherwiſe having had due notice thereof, to pay to me, out of the money by you collected or to be collected for the relief of the poor, the ſum of ——— being the proportion of your ſaid townſhip [or *pariſh*] *for and towards the general county rate, for the repairing of bridges; repairing of the gaol, and for the relief of priſoners therein; and for the relief of the priſoners in the king's bench and marſhalſea priſons; repairing and furniſhing the houſe of correction, with the ſalary of the keeper thereof; the treaſurer's ſalary; the coroner's fees; the charges concerning vagrants, ſoldier carriages, convicting and tranſporting felons, and other county charges. And herein you are not to fail, on the peril that ſhall enſue thereof. Given under my hand at* Lathehead *in the ſaid county, the ——— day of ———*

Tho. Denniſon, *High conſtable.*

Or, in the northern counties abovementioned, the juſtices, if they think proper, inſtead of ordering the money to be paid by the churchwardens and overſeers, may order it to be paid by the petty conſtables: and then the high conſtable's precept to the petty conſtables may be thus:

Weſtmorland, Kendal ward. { To the conſtables of ——— in the ſaid county.

BY virtue of an order from his majeſty's juſtices of the peace in and for the ſaid county, in their general quarter ſeſſions aſſembled, you are hereby required to raiſe the ſum of ——— within your conſtablewick, for which you are to make an equal rate within your ſaid conſtablewick, and to levy the ſame, in ſuch manner as money for the relief of the poor is by law to be rated or levied: which ſaid ſum you are to pay unto me, in thirty days time from your receipt of this precept, or otherwiſe having had due notice thereof; the ſame being the proportion of your ſaid conſtablewick, for and towards the general county rate, for the repairing of bridges.

And

And ſo repeat the ſeveral particulars as in the laſt precedent; and that, for this reaſon, that the people may know what it is they pay their money for.

Court leet. See Leet.
Court of ſeſſions. See Seſſions.
Curriers. See Leather.

Cuſtoms.

THE laws relating to the cuſtoms, ſo far as juſtices of the peace, conſtables, and other ſuch officers, are concerned therein, being conſiderably connected with the laws of exciſe, it is thought proper to refer this ſubject to the title Exciſe, where the whole will be more clearly comprehended under one view.

Cuſtos rotulorum.

BY the 37 *H.* 8. *c.* 1. (which was altered by the 3 & 4 *Ed.* 6. *c.* 1. but reſtored by 1 *W. c.* 21.) No perſon ſhall be appointed to the office of *cuſtos rotulorum*, but ſuch as ſhall have a bill ſigned with the king's hand for the ſame; which bill ſigned ſhall be a ſufficient warrant to the lord chancellor, to make a commiſſion, aſſigning and authorizing thereby the ſame perſon to be *cuſtos rotulorum*, until the king hath by another bill with his own hand appointed one other perſon to have the ſame office, by himſelf, or his ſufficient deputy, learned in the laws, and meet and able to ſupply the ſaid office.

In purſuance whereof, the laſt clauſe in the commiſſion of the peace is generally to this effect: "Laſtly, we have aſſigned you "the aforeſaid ——— keeper of the rolls of our peace in our "ſaid county, and therefore you ſhall cauſe to be brought before "you and your ſaid fellows, at the days and places aforeſaid, "the writs, precepts, proceſſes, and indictments aforeſaid, that "they may be inſpected, and by a due courſe determined, as is "aforeſaid."

Cutting out tongues. See Maim.
Cyder. See Exciſe.

Damage feasant. See Distress.

Debtors.

HOW prisoners for debt shall be demeaned. See title Gaol.

Insolvent debtors brought to the assizes, in order to be discharged, shall pay for their bringing thither, not exceeding 12*d.* a mile; and if they are not able to pay, then the same shall be paid by the treasurer, out of the county stock. 3 G. 2. *c.* 27. *s.* 2.

The last insolvent act is that of the 28 G. 2. *c.* 13. for relief of persons imprisoned for debt, on or before *Jan.* 1. 1755. On which act no discharges are to be obtained after *Mar.* 31. 1757.

Deer. See Game.

Defamation. See Slander.

Demurrer.

A *Demurrer* (from *demorari*) signifies an *abiding* in point of law, upon which the defendant joins issue, allowing the fact to be true as laid in the indictment. *Wood* 1082.

In criminal cases not capital, if the defendant demur to an indictment, the court will not give judgment against him to answer over, but final judgment. 2 *Haw.* 334.

But regularly in all cases of felony, where a man pleads a special matter, tho' he conclude his plea with not guilty to the felony, or do not conclude it so, yet if his plea be tried, or found, or ruled against him, he shall be put to his plea of not guilty, and be tried for the felony; for tho' a man shall lose his land in some cases for mispleading, yet he shall not lose his life for mispleading. 2 *H. H.* 257.

Deodand.

1. DEODAND is, when any moveable thing inanimate, or beast animate, doth move to or cause the untimely death of any reasonable creature, by mischance, without the will or fault of himself, or of any person. 3 *Inst.* 57.

2. This,

2. This, altho' it be not properly homicide, nor puniſhable as a crime, yet is taken notice of by the law, as far as the nature of the thing will bear, in order to raiſe the greater abhorrence of murder: And the unhappy inſtrument or occaſion of ſuch death, is called a *deodand (deo dandum)*, and forfeited to the king, to be diſpoſed of to pious uſes by the king's almoner; as alſo are all ſuch weapons whereby one man kills another. 3 *Inſt.* 57. 1 *Haw.* 66.

3. It ſeems clearly ſettled, contrary to the former opinions, that a horſe, or the like, killing an *infant* within the age of diſcretion, is as much forfeited as if he were of age. 1 *Haw* 66.

4. Alſo, it was anciently holden, that things *fixed to a freehold*, as the wheel of a mill, or a bell hanging in the ſteeple, may be deodands; but by the latter reſolutions they cannot, unleſs they were ſevered before the accident happened. 1 *Haw.* 66.

5. It is agreed by all, that a *ſhip* in ſalt water, from which a man falls and is drowned, is not forfeited, becauſe perſons at ſea are continually expoſed to ſo many perils, that the law imputes not ſuch misfortunes to the ſhip. Alſo it ſeems clear, that when a man riding on a horſe over a river, is drowned thro' the violence of the ſtream, the horſe is not forfeited, becauſe not that, but the water cauſed his death. But it is ſaid, that a ſhip, by a fall from which a man is drowned, in the freſh water, ſhall be forfeited, but not the merchandize therein; becauſe they no way contribute to his death. And by the ſame reaſon it ſeems, that if a man riding on the ſhafts of a waggon, fall to the ground and break his neck, the horſes and waggon only are forfeited, and not the loading, becauſe it no way contributed to his death; for which cauſe, where a thing not in motion cauſes a man's death, that part thereof only, which is the immediate cauſe, is forfeited. As where one climbing upon the wheel of a cart, while it ſtands ſtill, falls from it, and dies of the fall, the wheel only is forfeited: But if he had been killed by a bruiſe from one of the wheels being in motion, the loading alſo would have been forfeited, becauſe the weight thereof made the hurt the greater; and it is a general rule, that wherever the thing which is the occaſion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, are forfeited alſo. 1 *Haw.* 66.

6. Thus a cart met a waggon loaded upon the road, and the cart endeavouring to paſs by the waggon, was driven upon an high bank and overturned, and threw a perſon that was in the cart, juſt before the wheels of the waggon, and the waggon ran over him and killed him; it was reſolved in this caſe, that the cart, waggon, loading, and all the horſes were deodands, becauſe they all moved to the death. 1 *Salk.* 220.

7. If a weight of earth fall upon a worker in a mine, and kill him; the weight of earth is forfeit, and not the whole mine. 1 *H. H.* 420.

8. In all theſe caſes, if the party wounded die not of his wound, within a year and a day after he received it, there ſhall be nothing forfeited; for the law doth not look on ſuch a wound as the cauſe

of a man's death, after which he lives ſo long: But if the party die within that time, the forfeiture ſhall have relation to the wound given, and cannot be ſaved by any alienation or other act whatſoever in the mean time. 1 *Haw.* 67.

9. However nothing can be forfeited as a deodand, nor ſeized as ſuch, till it be found by the coroner's inqueſt to have cauſed a man's death; but after ſuch inquiſition, the ſheriff is anſwerable for the value of it, and may levy the ſame on the town where it fell, and therefore the inqueſt ought to find the value of it. 1 *Haw.* 67.

10. And if the coroner omits his duty in this caſe, the inquiſition may be made by the commiſſioners of gaol delivery, oyer, and terminer, or of the peace. 1 *H. H.* 419.

Dice. See Stamps.

Diſſenters.

I. Proteſtant diſſenters exempted from certain penalties by the act of toleration.

II. Proteſtant diſſenters intitled to certain privileges by the act of toleration.

III. Laws againſt diſſenters not altered by the act of toleration.

IV. Laws relating to proteſtant diſſenters made ſince the act of toleration.

I. Proteſtant diſſenters exempted from certain penalties by the act of toleration.

1. AS *to all proteſtant diſſenters in general.* Againſt whom the ſeven following ſtatutes have been enacted:

(1) By the 1 *El. c.* 2. *ſ.* 14. Every perſon not having reaſonable excuſe, ſhall reſort to their pariſh church or chapel, or upon reaſonable let thereof, to ſome uſual place where common prayer ſhall be uſed, on every *Sunday* and holiday; on pain of puniſhment by the cenſures of the church, or of forfeiting for every offence 12 *d.*

(2) By the 23 *El. c.* 1. Every perſon above the age of 16, who ſhall not repair to ſome church, or chapel, or uſual place of common prayer, ſhall forfeit for every month 20 *l.* And if he ſhall forbear for 12 months he ſhall be bound to the good behaviour till he conform.

And if any perſon ſhall keep a ſchoolmaſter, who ſhall not repair to church, or be allowed by the biſhop, he ſhall forfeit 10 *l.* a month, and the ſchoolmaſter ſhall be impriſoned for a year.

(3) By the 29 *El.* *c.* 6. Every offender in not repairing to church, having been once convicted, ſhall without any other indictment or conviction, pay half yearly into the exchequer 20 *l.* for every month afterwards, until he conform; which if he ſhall omit to do, the king may ſeize all his goods, and two parts of his lands.

(4) And by 1 *J.* *c.* 4. The king may refuſe the 20 *l.* a month, and take two parts of the land, at his option.

And any perſon retaining or keeping in his houſe any ſervant, or other, who ſhall not repair to church, ſhall forfeit 10 *l.* a month.

(5) And by the 1 *J.* *c.* 5. No recuſant in not repairing to church, being convicted thereof, ſhall enjoy any publick office, or ſhall practiſe law or phyſick, or be executor, adminiſtrator, or guardian.

And if any perſons ſhall ſend their children over ſeas for education, they ſhall forfeit 100 *l.* and ſuch child be diſabled to inherit, or take any benefit by gift, conveyance, or deviſe.

(6) And by the 35 *El.* *c.* 1. If any perſon refuſing to repair to church, ſhall be preſent at any aſſembly, meeting, or conventicle, under pretence of any exerciſe of religion, he ſhall be impriſoned till he conform; and if he ſhall not conform in three months, he ſhall abjure the realm; which if he ſhall refuſe to do, or after abjuration ſhall not go, or ſhall return without licence, he ſhall be guilty of felony without benefit of clergy. And whether he ſhall abjure or not, he ſhall forfeit his goods, and ſhall forfeit his lands during life.

(7) And by the 22 *C.* 2. *c.* 1. If any perſon, being ſixteen years of age, ſhall be preſent at any conventicle or meeting, under pretence of any exerciſe of religion, in other manner than according to the liturgy and practice of the church of *England*, at which there ſhall be five perſons or more aſſembled, beſides thoſe of the houſhold, if it be in an houſe where there is a family; or if it be in a houſe, field, or place, where there is no family, then where any five perſons or more are ſo aſſembled,—— every juſtice of the peace before whom information ſhall be made, ſhall (on pain of 100 *l.* half to the informer) on proof by confeſſion, or oath of two witneſſes, or the notorious evidence of the fact, make a record thereof (which ſhall be afterwards certified to the ſeſſions), which record ſhall be a full conviction: Whereupon he ſhall impoſe upon every offender a fine of 5 *s.* for the firſt offence, and for every other offence 10 *s.* to be levied by diſtreſs and ſale of the goods of the offender, or in caſe of the poverty of ſuch offender, upon the goods of any other perſon then convicted of the like offence, ſo as the ſum to be levied on any one perſon in caſe of the poverty of other offenders amount not in the whole to above 10 *l.* on occaſion of any one meeting; one third to the king, one third to the poor, and one third to the informer and to ſuch perſons as the juſtice ſhall ap-

point, having regard to their diligence in diſcovering, diſperſing, and puniſhing of the ſaid conventicles.

And every perſon who ſhall ſuffer any ſuch meeting in his houſe, outhouſe, barn, or backſide, ſhall forfeit 20 *l.* in like manner; and in caſe of his inability, it ſhall be levied on the goods of ſuch perſons who ſhall be convicted of being preſent.

If the penalty exceeds 10 *l.* an appeal lies to the ſeſſions. And if the party is there found guilty by a jury, he ſhall pay treble coſts. And no other court whatſoever ſhall intermeddle, but the quarter ſeſſions only.

And juſtices and conſtables may with what force they think fit, upon refuſal to open, break open doors where they ſhall be informed ſuch conventicle is, and take the offenders into cuſtody. And on certificate from any juſtice of the peace of his particular information or knowledge of ſuch unlawful meeting, and that he is not able, with ſuch aſſiſtance as he can get, to ſuppreſs the ſame; any commiſſioned officer of the militia, or other his majeſty's forces, with ſuch troops or companies of horſe and foot, and alſo the ſheriff, and other miniſters of juſtice, with ſuch other aſſiſtance, as they ſhall think meet, or can get in readineſs with the ſooneſt, ſhall repair to the place, and by the beſt means they can, ſhall diſſolve, diſſipate, and prevent ſuch meeting, and take the offenders into cuſtody.

Thus ſtood the laws at the revolution.

Now by the aforeſaid act of toleration, made in the firſt year of *William* and *Mary*, it is enacted, that neither the ſtatutes aforeſaid, nor any other made againſt papiſts and popiſh recuſants (except the ſtatutes of the 25 *C.* 2. *c.* 2. and the 30 *C.* 2. *ſt.* 2. *c.* 1. hereafter mentioned) ſhall extend to any perſon diſſenting from the church of *England*, who ſhall be qualified in the manner following;

(1) They ſhall at the general ſeſſions of the peace, take the oaths of allegiance, ſupremacy, and abjuration (1 *G.* *c.* 13).

(2) They ſhall alſo there make and ſubſcribe the declaration of the 30 *C.* 2. *ſt.* 2. *c.* 1. againſt popery.

(3) The place of meeting ſhall be certified to the biſhop of the dioceſe, or to the archdeacon of the archdeaconry, or to the juſtices of the peace at the general or quarter ſeſſions, and regiſtred in the ſaid biſhop's or archdeacon's court, or recorded at ſuch ſeſſions. And the regiſter, or clerk of the peace, ſhall regiſter or record the ſame, and give certificate thereof to any who ſhall demand it, for which no more ſhall be taken than ſixpence.

(4) The doors of the place where they meet ſhall not, during ſuch time of their meeting, be locked, barred, or bolted.

(5) They ſhall not in writing deny the doctrine of the bleſſed trinity.

2. What hath hitherto been obſerved, regardeth all proteſtant diſſenters in general. There are beſides certain other laws, which concern

concern their *teachers and preachers only*. Which are theſe three that follow;

(1) By the 17 *C.* 2. *c.* 2. No perſon, who ſhall take upon him to teach or preach in any meeting or conventicle, under pretence of any exerciſe of religion, ſhall, unleſs only in paſſing upon the road, or unleſs required by legal proceſs, come within five miles of a city, town corporate, or borough; nor ſhall be ſchoolmaſter, or take any boarders or tablers to be inſtructed by himſelf or any other, without taking an oath of allegiance therein mentioned, on pain of 40 *l.* one third to the king, one third to the poor, and one third to him who ſhall ſue in the courts at *Weſtminſter*, aſſizes, or ſeſſions. And two juſtices, on oath of the offence, may commit them for ſix months.

(2) And by the 22 *C.* 2. *c.* 1. If any perſon ſhall take upon him to preach or teach in any meeting or conventicle, in other manner than according to the practice of the church of *England*, he ſhall forfeit for the firſt offence 20 *l.* and for every other offence 40 *l.* And if he be a ſtranger, or in the judgment of the juſtice of the peace before whom he is convicted, unable to pay, it may be levied on the goods of any perſon preſent.

(3) And by the 13 & 14 *C.* 2. *c.* 4. *ſ.* 14. No perſon ſhall preſume to conſecrate and adminiſter the ſacrament before he be ordained prieſt, according to the form and manner of the church of *England*.

Now by the aforeſaid act of toleration, it is provided, that no perſon diſſenting from the church of *England*, in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of diſſenting proteſtants, ſhall be liable to any of the aforeſaid penalties, who ſhall be qualified as follows:

(1) He ſhall at the ſeſſions take the oaths aforeſaid.

(2) He ſhall there make and ſubſcribe the declaration of the 30 *C.* 2. *ſt.* 2. *c.* 1.

(3) He ſhall there alſo declare his approbation of, and ſubſcribe the 39 articles, except the 34th, 35th and 36th (concerning the quality, examination, and ſubſcription of ſuch as are to be made miniſters), and except theſe words of the 20th article, *viz.* [*the church hath power to decree rites or ceremonies, and authority in controverſies of faith, and yet*]: All which ſhall be entred of record in court; for which the clerk of the peace ſhall have 6 *d.* and no more.

(4) The place for worſhip ſhall be certified as before.

(5) The doors of the place, where he ſhall preach or teach, ſhall not be locked, barred, or bolted.

(6) He ſhall not deny, in his preaching or teaching, the doctrine of the bleſſed trinity.

3. Furthermore, there are beſides the aforeſaid general laws, certain other penal laws, affecting the *quakers* in particular: namely, theſe two;

(1) By the 5 *El. c.* 1. If any perſon ſhall refuſe to take the oaths of allegiance and ſupremacy, duly tendred, he ſhall incur a *præmunire*.

(2) And by the 13 & 14 *C.* 2. *c.* 1. If any perſon, who ſhall maintain that the taking of an oath is unlawful, ſhall refuſe an oath duly tendred, he ſhall forfeit a ſum not exceeding 5 *l.* for the firſt offence, 10 *l.* for the ſecond, and for the third ſhall abjure the realm or be tranſported.

But now by the act of toleration, quakers ſhall be diſcharged of the penalties of theſe laws, and of all others made againſt poſiſh recuſants, or proteſtant non-conformiſts, and ſhall enjoy all other benefits, under the like limitations, which any other diſſenters enjoy, on their qualifying themſelves in the ſame manner as other diſſenters; except that inſtead of the oaths at ſeſſions, they ſhall be allowed to make and ſubſcribe a declaration of fidelity, and take the effect of the abjuration oath, and to ſubſcribe a profeſſion of their chriſtian belief (all of which are inſerted under title **Oaths.**)

4. And as to *anabaptiſts* in particular, it is enacted by the ſaid act of toleration, that whereas ſome diſſenting proteſtants ſcruple the baptizing of infants,——Every perſon in pretended holy orders, or pretending to holy orders, or preacher, or teacher, that ſhall take the oaths, and make and ſubſcribe the declaration, and ſubſcribe the 39 articles, except as in the caſe of other diſſenting teachers as before, and except alſo part of the 27th article touching infant baptiſm, ſhall enjoy the ſame privileges as other diſſenting teachers.

II. Proteſtant diſſenters intitled to certain privileges by the act of toleration.

Beſides the exemption from penalties, his majeſty's proteſtant ſubjects are by the act of toleration intitled to certain privileges; which are of two kinds; 1. Such as concern all proteſtant diſſenters in general. 2. Such as concern their teachers in particular.

1. As to all *proteſtant diſſenters in general.*——They ſhall not be *proſecuted in any eccleſiaſtical court, for or by reaſon of their not conforming to the church of* England.——But this ſhall not exempt them from paying of tithes, or other parochial duties, or any other duties to the church or miniſter, nor from any proſecution in any eccleſiaſtical court, or elſewhere, for the ſame.

Since this act, Mr. *Hawkins* obſerves from 3 *Lev.* 376. a prohibition will lie to the ſpiritual court proceeding againſt perſons for incontinency, who have been married in a licenſed conventicle. The caſe was this; Two perſons, who were publiſhed and married in a conventicle, were afterwards libelled againſt in the ſpiritual court, for incontinence and fornication; and upon moving for a prohibition, time was aſſigned to ſhew cauſe why it ſhould not go, and the proceedings in the eccleſiaſtical court were ſtayed in the mean time. Afterwards, it was agreed that a prohibition

ſhould be granted, and that the plaintiff ſhould declare; that ſo, upon demurrer, the point might be tried. But what the judgment was, or whether the cauſe proceeded to trial, doth not appear by the report. *Cod.* 617.

Mr. *Hawkins* likewiſe obſerves (1 *Haw.* 12.) that it having been doubted whether diſſenting ſchoolmaſters, as ſuch, were exempted by the toleration act from the penalties inflicted upon them in the ſeveral acts againſt diſſenters, it was farther enacted by the 12 *An. c.* 7. that whoever ſhall keep any ſchool or ſeminary, or teach any youth as tutor or ſchoolmaſter (unleſs he inſtruct them only in reading, writing, arithmetick, or ſuch mathematical learning as relates to navigation, or ſome mechanical art, and that in the *Engliſh* tongue) without having firſt ſubſcribed the declaration of the 13 & 14 *C.* 2. relating to conformity with the church of *England*, and without a licence from the biſhop, he ſhall be impriſoned for three months. But this was repealed by the 5 *G. c.* 4. So that the doubt is left where it was.

Mr. *Shaw* in his pariſh law, *p.* 68. ſays, it is held (but doth not ſay by whom) that diſſenters by the act of toleration are not exempted, either from the penalties of the 1 *J. c.* 4. or of the 13 & 14 *C.* 2. *c.* 4. againſt teaching a ſchool without licence from the biſhop.

In the caſe of *K.* and *Daviſon*, *T.* 12 *W.* as reported both by *Salkeld* and L. *Raymond*, *Daviſon*, a quaker, on an *habeas corpus* upon a writ of *excommunicato capiendo*, for teaching ſchool without licence, was admitted to bail, till it ſhould be determined whether this was an offence. But it it doth not appear from either of thoſe reports, what was the determination. 1 *Salk.* 105. L. *Raym.* 603.

Upon the whole, it ſeemeth ſomewhat ſtrange, that in a caſe of ſo much importance as is the education of children, this matter during the ſpace of ſo many years hath not yet been ſettled beyond all doubt.

Moreover; If any perſon diſſenting from the church of *England*, ſhall be appointed to the office of high conſtable, petit conſtable, churchwarden, overſeer of the poor, or any other parochial or ward office, and ſuch perſon ſhall ſcruple to take upon him any of the ſaid offices in regard of the oaths, or any other matter or thing, required by the law to be taken or done, in reſpect of ſuch office, every ſuch perſon ſhall and may execute ſuch office by a ſufficient deputy by him to be provided, that ſhall comply with the laws on this behalf. Provided, that the deputy be allowed and approved by ſuch perſons, and in ſuch manner, as ſuch officers ſhould by law have been allowed and approved.

2. *As to their teachers or preachers.*——Every teacher or preacher, in holy orders, or pretended holy orders, that is a miniſter, preacher, or teacher of a congregation, that ſhall take the oaths, and ſubſcribe the declaration and articles as aforeſaid, ſhall be thenceforth exempted from ſerving upon any jury, or from being choſen or appointed to bear the office of churchwarden, overſeer of the poor, or any other parochial or ward office,

or other office in any hundred, city, town, pariſh, diviſion, or wapentake.

But this ſeems clearly not to extend to *quaker* teachers or preachers; for they are neither in *holy orders*, nor *pretended holy orders*. It is true, by a ſubſequent ſtatute of the 7 & 8 *W.* quakers are exempted from ſerving on *juries*; but neither by that, nor any other act, are any quakers exempted from ſerving the office of churchwarden, overſeer of the poor, or other parochial or ward office, by themſelves, or a ſufficient deputy to be by them provided.

III. Laws againſt diſſenters not altered by the act of toleration.

1. No clauſe in the toleration act ſhall give any eaſe or benefit, to any popiſh recuſant; or to any that ſhall deny in preaching or writing the doctrine of the trinity. 1 *W.* *c.* 18. *ſ.* 17.

And every juſtice of the peace may at any time require any perſon that goes to any meeting for the exerciſe of religion, to make and ſubſcribe the ſaid declaration, and to take the ſaid oaths (or if quakers, the declaration of fidelity); and upon refuſal thereof, ſuch juſtice ſhall commit ſuch perſon to priſon; and ſhall certify his name to the next ſeſſions; and if he ſhall refuſe again to make and ſubſcribe the declaration there, he ſhall be taken for a popiſh recuſant convict, and ſuffer accordingly. *id.* *ſ.* 12.

2. The toleration act ſhall not extend to the ſtatute of the 25 *C.* 2. *c.* 2. which requires, that all perſons in office ſhall receive the ſacrament, according to the uſage of the church of *England*.

3. The toleration act ſhall not extend to the ſtatute of 30 *C.* 2. *ſt.* 2. *c.* 1. which diſables perſons from ſitting in either houſe of parliament, or coming to court, who ſhall not ſubſcribe the declaration therein mentioned, againſt popery.

IV. Laws relating to proteſtant diſſenters, made ſince the act of toleration.

1. If any perſon, diſſenting from the church of *England* (not in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation) who ſhould have been intitled to the benefit of the toleration act, if he had duly taken, made, and ſubſcribed the oaths and declaration, or otherwiſe qualified himſelf as required by the act, ſhall be proſecuted on any of the penal ſtatutes, from which proteſtant diſſenters are exempted by the ſaid act,—ſhall at any time during ſuch proſecution, take, make, and ſubſcribe, the ſaid oaths and declaration, or being a quaker ſhall qualify according to that act, either in the manner preſcribed by that act, or before two juſtices who ſhall take and return the ſame to the next ſeſſions to be there recorded; ſuch perſon ſhall be intitled to the benefit of the act, as fully as if he had qualified himſelf in the time preſcribed by the act, and ſhall from thenceforth be diſcharged from all the penalties

nalties and forfeitures incurred by force of any of the aforeſaid penal ſtatutes. 10 *An. c.* 2. *ſ.* 8.

2. And any preacher or teacher, duly qualified, ſhall be allowed to officiate in any congregation, altho' the ſame be not in the county where he was ſo qualified; provided that the place of meeting hath been duly certified, and regiſtred, or recorded; and ſuch teacher or preacher ſhall, if required, produce a certificate of his having ſo qualified himſelf, under the hand of the clerk of the peace where he was qualified; and ſhall alſo before any juſtice of ſuch county where he ſhall ſo officiate, make and ſubſcribe ſuch declaration, and take ſuch oaths as are mentioned in the act of toleration, if thereunto required. 10 *An. c.* 2. *ſ.* 9.

3. If any mayor, bailiff, or other magiſtrate, ſhall wilfully reſort to, or be preſent at any publick meeting for religious worſhip, other than of the church of *England*, in the gown or other peculiar habit, or attended with the enſigns belonging to his office, he ſhall be diſabled to hold the ſame, or any other publick office. 5 *G. c.* 4. *ſ.* 2.

Diſtillers. See Exciſe.

Diſtreſs.

I. For what cauſes a diſtreſs ſhall be.
II. What goods may be diſtrained, and what not.
III. At what time the diſtreſs ſhall be taken.
IV. Where the diſtreſs ſhall be made.
V. That reaſonable diſtreſs ſhall be taken.
VI. Manner of making diſtreſs.
VII. Diſtreſs how to be demeaned.
VIII. Of reſcous and pound breach.
IX. Replevying the diſtreſs.
X. Sale of the diſtreſs.
XI. Irregularity in the proceedings.
XII. Landlord re-entring on non-payment.
XIII. Caſe of tenant holding over.
XIV. Tenant deſerting the premiſſes.
XV. Rent in caſe of an execution.
XVI. Rent on the death of tenant for life.
XVII. Of diſtreſs by warrant of juſtices of the peace.

I. For what cauſes a diſtreſs ſhall be.

Rent in arrear.

1. DISTRESS for rent muſt be, for rent in arrear; therefore it may not be made on the ſame day on which the rent becomes due; for if the rent is paid in any part of that day, whilſt a man can ſee to count money, the payment is good.

Tender of payment.

2. It muſt not be after tender of payment: for if the landlord come to diſtrain the goods of his tenant for rent behind; before the diſtreſs, the tenant may upon the land tender the arrearages, and if after that a diſtreſs be taken, it is wrongful: And if the landlord have diſtrained; if the tenant, before the impounding thereof, tender the arrearages, the landlord ought to deliver the diſtreſs, and if he doth not, the detainer is unlawful. Even ſo it is, in caſe of a diſtreſs for damage feaſant (or damage done by cattle treſpaſſing), the tender of amends before the diſtreſs, maketh the diſtreſs unlawful; and after the diſtreſs, and before the impounding, the detainer unlawful. 2 *Inſt.* 107.

But in this caſe, altho' the owner, tender ſufficient amends, yet he cannot take his beaſts out of the pound, if the amends be refuſed; but he muſt replevy: and if it be found at the trial that the amends was not ſufficient, the perſon on whom they treſpaſſed

ſhall

ſhall have damages; if the amends tendred were ſufficient, then the owner of the beaſts ſhall have damages. *Dr. & St.* 112.

3. The like remedy may be had by diſtreſs, impounding and ſale, in caſes of rents, ſeck rents of aſſize, and chief rents, as in caſe of rents reſerved upon leaſe. 4 G. 2. *c.* 28. *ſ.* 5. Seck rents and chief rents.

4. Where the agreement is not by deed, the landlord may recover a reaſonable ſatisfaction, in an action on the caſe. 11 G. 2. *c.* 19. *ſ.* 14. Agreement not by deed.

5. Perſons having rent in arrear, upon any leaſe determined, may diſtrain for ſuch arrears after the determination of the leaſe, in the ſame manner as if it had not been determined; provided that ſuch diſtreſs be made in ſix months after the determination of ſuch leaſe, and during the continuance of ſuch landlord's title or intereſt, and during the poſſeſſion of the tenant from whom ſuch arrear became due. 8 *An. c.* 14. *ſ.* 6, 7. Leaſe determined.

6. It was adjudged, that one cannot avow for two diſtreſſes for one and the ſame rent; but if the defendant had pleaded, that at the time of taking the firſt diſtreſs, there was not ſufficient to be taken for the whole rent, upon the land, and that the firſt diſtreſs was but of ſuch a value, it had been good. 3 *Salk.* 137. Two diſtreſſes for one rent.

7. If any diſtreſs and ſale ſhall be made, for rent in arrear and due, when none is in truth due, the owner ſhall recover double value with full coſts. 2 *W. Seſſ.* 1. *c.* 5. *ſ.* 5. Diſtraining where no rent is due.

And if the diſtreſs be taken of goods without cauſe, the owner may make *reſcous*; but if they be diſtrained without cauſe, and impounded, the owner cannot break the pound and take them out, becauſe they are in the cuſtody of the law. 1 *Inſt.* 47.

II. What goods may be diſtrained, and what not.

1. Diſtreſs for rent muſt be of a thing, whereof a valuable property is in ſomebody; and therefore, dogs, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be diſtrained. 1 *Inſt.* 47. Valuable property.

2. Altho' it be of valuable property, as a horſe; yet when a man or woman is riding on him, or an ax in a man's hand cutting of wood, and the like, they are for that time privileged, and cannot be diſtrained. 1 *Inſt.* 47. Separate from the perſon.

But it is ſaid, that if one be riding upon an horſe damage feaſant, the horſe may be led to the pound with the rider upon him. 1 *Sid.* 422, 440.

And it hath been held, that horſes joined to a cart, with a man upon it, cannot be diſtrained for rent (altho' they may for damage feaſant); but both cart and horſes may, if the man be not upon the cart. 1 *Ventr.* 36.

3. Valuable things ſhall not be diſtrained for rent, for benefit and maintenance of trades, which by conſequent are for the common wealth, and are there by authority of law; as a horſe in a ſmith's ſhop ſhall not be diſtrained for the rent iſſuing out of the ſhop, nor a horſe in an hoſtry, nor the materials in a weaver's ſhop for making of cloth, nor cloth or garments in a taylor's ſhop, nor ſacks of corn or meal in a mill, nor any thing diſtrained for damage For maintenance of trades.

damage feaſant, for it is in cuſtody of the law; and the like. 1 *Inſt.* 47.

Tools of a man's profeſſion.

4. Beaſts belonging to the plough ſhall not be diſtrained (which is the ancient common law of *England*, for no man ſhall be diſtrained by the utenſils or inſtruments of his trade or profeſſion, as the ax of the carpenter, or the books of a ſcholar) while goods or other beaſts may be diſtrained. 1 *Inſt.* 47.

But this rule holds only in diſtreſſes for rent arrear, amerciaments, and the like; but doth not extend to caſes, where a diſtreſs is given, in the nature of an execution, by any particular ſtatute, as for poor rates, and the like. 3 *Salk.* 136.

Things fixed to the freehold.

5. Furnaces, cauldrons, or other things fixed to the freehold, or the doors or windows of a houſe, or the like, cannot be diſtrained. 1 *Inſt.* 47.

Money.

6. Money in a bag ſealed may be diſtrained, but not out of a bag. *Read. Diſtr.*

Corn cut.

7. By the 2 *W. Seſſ.* 1. *c.* 5. Perſons having rent arrear on any demiſe, leaſe, or contract, may ſeize and ſecure any ſheaves or cocks of corn, or corn looſe or in the ſtraw, or hay being in any barn or granary, or upon any hovel, ſtack, or rick, or otherwiſe upon any part of the land charged with the rent, and may lock up or detain the ſame in the place where found, in the nature of a diſtreſs; ſo as the ſame be not removed to the damage of the owner, out of the place where found and ſeized, but be kept there (as impounded) till replevied or ſold. *ſ.* 3.

Corn growing.

8. Alſo by the 11 *G.* 2. *c.* 19. The landlord may take and ſeize corn, graſs, hops, roots, fruits, pulſe, or other product growing, as a diſtreſs; and the ſame may cut, gather, make, cure, carry and lay up, when ripe, in the barns or other proper place on the premiſſes; and if there ſhall be no barn or proper place on the premiſſes, then in any other barn or proper place which he ſhall procure, ſo near as may be to the premiſſes: the appraiſement whereof ſhall be taken when cut, gathered, cured, and made, and not before. *ſ.* 8.

And notice of the place where the goods ſo diſtrained ſhall be lodged, ſhall in one week after the lodging thereof be given to the tenant, or left at the laſt place of his abode. *ſ.* 9.

Cattle eſcaped on the premiſſes.

9. Where a ſtranger's beaſts eſcape into the land, they may be diſtrained for rent, tho' they have not been levant and couchant (that is, tho' they have not been in the ground for a good ſpace of time, or ſo long as to have lain down and roſe up again to feed) provided they are treſpaſſers: But if the tenant of the land is in default, in not repairing his fences, whereby the beaſts came into the land, the leſſor cannot diſtrain ſuch beaſts, tho' they have been levant and couchant, unleſs he have given notice to the owner, and he ſuffer them to remain there afterwards. *Lutw.* 364.

For if the leſſor had the lands in his own hands, he muſt repair the fences, and conſequently he muſt ſee that his leſſee doth it, for he is not to take advantage of his own default. 3 *Salk.* 136.

16. In the caſe of *Fowkes* and *Joyce*, *T.* 1 *W.* It was held by the court, that if a driver of cattle put them out to paſture, by way of agiſtment, tho' but for a night, and by leave both of the leſſor and leſſee, yet they may be diſtrained for rent, tho' they be upon the road to market. 2 *Ventr.* 50. Cattle depaſtured.

But it is ſaid, that this ſhall only be, for ſo much of the rent, as the paſturage of thoſe cattle for that time ſhall amount unto.

III. At what time the diſtreſs ſhall be taken.

For a rent or ſervice the lord cannot diſtrain in the night, but in the day time; and ſo it is of a rent charge, but for damage feaſant, one may diſtrain in the night, otherwiſe it may be the beaſts will be gone before he can take them. 1 *Inſt.* 142. In the night.

For before ſun riſing, or after ſun ſet, no man may diſtrain but for damage feaſant. *Mirrour c.* 2. *f.* 26.

And as to damage feaſant, if a man come to diſtrain, and ſee the beaſts in his ſoil, and the owner chaſe them out of purpoſe before the diſtreſs taken; yet the owner of the ſoil cannot diſtrain them, and if he doth, the owner of the cattle may reſcue them, for the beaſts muſt be damage feaſant at the time of the diſtreſs. 1 *Inſt.* 161. Damage feaſant.

IV. Where the diſtreſs ſhall be made. Where;

1. The king's officers, as ſheriffs and other, ſhall not take diſtreſſes in the fees wherewith churches in times paſt have been endowed; but diſtreſſes may be taken in poſſeſſions of the church newly purchaſed. 9 *Ed.* 2. *c.* 9. Church lands.

2. A man may diſtrain in places or lands within the fee, liable to diſtreſs, and not elſewhere. 52 *H.* 3. *c.* 15. 2 *Inſt.* 131. *Mir. Ch.* 2. *f.* 26. On the premiſſes.

3. And by the 11 *G.* 2. *c.* 19. The landlord may diſtrain any cattle or ſtock of the tenant, depaſturing on any common appendant or appurtenant, or any ways belonging to the premiſſes demiſed. *f.* 8. On the common.

4. No perſon (except the king's officers) ſhall take diſtreſſes in the king's highway. 52 *H.* 3. *c.* 15. In the highway.

And the reaſon is, becauſe the king's ſubjects ought to have free paſſage, as well to fairs and markets, as about their other affairs. But yet this ſhall not be taken, to make the diſtreſs utterly unlawful, ſo as to take advantage thereof in bar to an avowry, but to this purpoſe, that if the lord diſtrain in the highway, the tenant may have an action againſt him upon this ſtatute. 2 *Inſt.* 131, 132.

5. But by the 11 *G.* 2. *c.* 19. If any tenant for life, years, at will, ſufferance, or otherwiſe, ſhall fraudulently or clandeſtinely convey off the premiſſes his goods or chattels, to prevent the landlord from diſtraining; ſuch landlord, or any perſon by him lawfully impowered, may in 30 days next after ſuch conveying away, ſeize the ſame wherever they ſhall be found, and diſpoſe Carried off the premiſſes.

of

of them in ſuch manner, as if they had been diſtrained on the premiſſes. *ſ.* 1.

But no landlord ſhall diſtrain any goods ſold *bona fide*, and for a valuable conſideration, before ſuch ſeizure made, to any perſon not privy to ſuch fraud. *ſ.* 2.

And if any tenant ſhall ſo fraudulently convey his goods, or if any perſon ſhall wilfully aid him therein, or in concealing the ſame; every perſon ſo offending ſhall forfeit to the landlord double the value of ſuch goods, to be recovered in any court of record at *Weſtminſter*. *ſ.* 3.

But if the goods conveyed or concealed ſhall not exceed the value of 50 *l.* the landlord or his agent may exhibit a complaint in writing, before two juſtices reſiding near, who may ſummon the parties, and determine the offence in a ſummary way; and on full proof of the offence, they ſhall by order under their hands and ſeals adjudge the offender to pay double the value of ſuch goods to the landlord or his agent, at ſuch time as they ſhall appoint: and if, having notice of ſuch order, he ſhall refuſe or neglect ſo to do, they ſhall by warrant levy the ſame by diſtreſs and ſale; and for want of ſuch diſtreſs, may commit the offender to the houſe of correction for ſix months, unleſs the money be ſooner paid. *ſ.* 4.

Perſons aggrieved by order of ſuch juſtices, may appeal to the next general or quarter ſeſſions; who may give coſts to either party. *ſ.* 5.

And where the party appealing ſhall enter into recognizance, with one or two ſureties, in double the ſum ſo ordered to be paid, with condition to appear at ſuch ſeſſions; the order of the juſtices ſhall not be executed againſt him in the mean time. *ſ.* 6.

V. That reaſonable diſtreſs ſhall be taken.

Diſtreſs to be reaſonable.

Diſtreſſes ſhall be reaſonable, and not too great; and he that taketh great and unreaſonable diſtreſſes, ſhall be grievouſly amerced. 52 *H.* 3. *c.* 4.

For example, if the lord diſtrain two or three oxen for 12 *d.* or the like ſmall ſum, and the owner bring a replevy of the oxen, and the lord avow the taking of them for the 12 *d*; of his own ſhewing, he ſhall make fine: or the party may have his action upon this ſtatute. 2 *Inſt.* 107.

If the lord diſtrain an ox, or horſe, for a penny; if there were no other diſtreſs upon the land holden, the diſtreſs is not exceſſive: but if there were a calf, or a ſwine, or the like, then the taking of the ox or horſe is exceſſive, becauſe he might have taken a beaſt of leſs value. 2 *Inſt.* 107.

VI. Manner of making diſtreſs.

Breaking gates.

1. Gates or incloſures may not be broken open, nor thrown down, to make a diſtreſs. 1 *Inſt.* 161.

Opening doors.

2. Nor may the leſſor enter into the tenant's houſe, unleſs the doors are open. *Read. Diſtr.*

3. Where

3. Where any goods fraudulently or clandeſtinely conveyed, ſhall be kept in any houſe, barn, ſtable, outhouſe, yard, cloſe, or place locked up, faſtened, or otherwiſe ſecured, ſo as to prevent ſuch goods from being ſeized as a diſtreſs; it ſhall be lawful for the landlord, or his agent, to ſeize the ſame (firſt calling to his aſſiſtance the conſtable or other peace officer; and in caſe of a dwelling houſe, oath being alſo firſt made before a juſtice of the peace, of a reaſonable ground to ſuſpect that ſuch goods are therein) in the day time, to break open and enter ſuch houſe or place, and to take and ſeize the ſame, as he might have done if they had been in any open place. 11 *G.* 2. *c.* 19. *ſ.* 7. Aid of the conſtables and juſtices.

But except it be in this caſe where the goods are clandeſtinely conveyed, it may ſeem from what hath been ſaid, that the landlord hath no mean to come at the goods in order to make diſtreſs, if the tenant ſhall think fit to lock up his gates, and ſhut the doors: And the like may be obſerved in caſes of diſtreſs for the levying a penalty, by warrant of juſtices of the peace. Which matter may ſeem to require ſome conſideration.

4. If a landlord comes into a houſe, and ſeizes upon ſome goods as a diſtreſs, in the name of all the goods of the houſe; that will be a good ſeizure of all. 6 *Mod.* 215. Part in the name of the whole.

VII. Diſtreſs how to be demeaned.

1. He that diſtrains any thing that hath life, muſt impound it in a lawful pound, within three miles in the ſame county. 1 & 2 *P. & W. c.* 12. 1 *Inſt.* 47. Impounding off the premiſſes.

T. 21 *G.* 2. *Gimbart* and *Pelah.* The defendant juſtified impounding cattle damage feaſant. And on evidence it appeared, he put them into the next pound, though it happened to be in another county. And *Lee* Ch. J. held, it did not make him a treſpaſſer, though it ſubjected him to the penalty of the ſtatute of the 1 & 2 *P. & M. Str.* 1272.

Note, a pound is either *overt* or open, as in a pinfold made for ſuch purpoſes, or in his own cloſe, or in the cloſe of another by his conſent; and it is therefore called open, becauſe the owner may give his cattle meat and drink, without treſpaſs to any other, and then the cattle muſt be ſuſtained at the peril of the owner: Or it is a pound *covert* or cloſe, as to impound the cattle in ſome part of his houſe; and then the cattle muſt be ſuſtained with meat and drink at the peril of him that diſtraineth, and he ſhall not have any ſatisfaction therefore. 1 *Inſt.* 47.

But if the diſtreſs be of utenſils of houſhold, or ſuch like dead goods, which may take harm by wet or weather, or be ſtolen away; there he muſt impound them in a houſe, or other pound *covert*, within three miles in the ſame county; for if he impound them in a pound *overt*, he muſt anſwer for them. 1 *Inſt.* 47.

2. And by 11 *G.* 2. *c.* 19. any perſon diſtraining, may impound or otherwiſe ſecure the diſtreſs, of what kind ſoever it be, in ſuch place, or on ſuch part of the premiſſes, as ſhall be moſt convenient; and may appraiſe, and ſell the ſame, as any perſon before might have done off the premiſſes. *ſ.* 10. Impounding on the Premiſſes.

Uſing the goods diſtrained.

3. Cattle diſtrained may not be worked or uſed, unleſs for the owner's benefit, as a cow milked; much leſs may they be abuſed or hurt. *Cro. Ja.* 148.

Diſtreſs dying.

4. If a diſtreſs dies in the pound, the diſtrainer may diſtrain again. 1 *Salk.* 248.

Dying by dureſs.

5. It is the diſtrainer's own fault, if he puts the diſtreſs in a pound which will not hold it; but he cannot juſtify the tying of cattle in the pound; and if he ties a beaſt, and it is ſtrangled, he muſt pay damages. 1 *Salk.* 248.

VIII. Of reſcous and pound-breach.

Reſcous and pound-breach.

1. By the common law, if a man break the pound, or the lock of it, or part of it, he greatly offendeth againſt the peace, and doth treſpaſs to the king, and to the lord of the fee, and to the ſheriffs, and hundredors, in breach of the peace, and to the party, and to the delaying of juſtice; and therefore hue and cry is to be levied againſt him, as againſt thoſe who break the peace. *Mir. c.* 2. *ſ.* 26.

2. And by ſtatute, on any pound-breach or reſcous, of goods diſtrained for rent, the perſon grieved thereby, ſhall in a ſpecial action upon the caſe, recover treble damages and coſts againſt the offender, or againſt the owner of the goods, if they be afterwards found to have come to his uſe. 2 *W. Seſſ.* 1. *c.* 5. *ſ.* 4.

Treble damages and coſts] In the caſe of Sir *Wilfred Lawſon* v. *Storey*, *M.* 6 *W.* It was adjudged, that the coſts ſhall be trebled as well as damages. L. *Raym.* 20.

3. When a man hath taken diſtreſs, and the cattle diſtrained, as he is driving them to the pound, go into the houſe of the owner; if he that took the diſtreſs demand them of the owner, and he deliver them not, this is a reſcous in law. 1 *Inſt.* 161.

IX. Replevying the diſtreſs.

Replevy.

1. The ſheriff of every county ſhall, at his firſt county day, or in two months after he hath received his patent of office, appoint four deputies at the leaſt, dwelling not above 12 miles one diſtant from another, to make replevies; on pain of 5 *l.* a month, half to the king, and half to him that ſhall ſue in any court of record. 1 *&* 2 *P. & M. c.* 12. *ſ.* 3.

2. And the ſheriff, or other officer having authority to grant replevins, ſhall in every replevin of a diſtreſs for rent, take in his own name, from the plaintiff and two ſureties, a bond in double the value of the goods diſtrained, to be aſcertained on the oath of one witneſs, and conditioned for proſecuting the ſuit with effect, and without delay, and for duly returning the goods diſtrained, in caſe a return ſhall be awarded; before any deliverance be made of the diſtreſs; and the ſheriff ſhall aſſign ſuch bond to the *avowant*, or perſon making *conuſance*. 11 *G.* 2. *c.* 19. *ſ.* 23.

Note,

Note, *avowry* is, where one takes a diſtreſs, and the perſon diſtrained ſues a replevin; then he that took the diſtreſs muſt *avow* and juſtify in his plea, for what cauſe he took it, if he took it in his own right; and this is called an *avowry*: If he took it in the right of another, then, when he hath ſhewed the cauſe, he muſt make *conuſance* of the taking, as bailiff or ſervant to him, in whoſe right he took it. *Terms of the L.*

X. Sale of the diſtreſs.

Where any goods ſhall be diſtrained for rent reſerved and due upon any demiſe, leaſe, or contract, and the tenant, or owner of the goods diſtrained, ſhall not within five days next after ſuch diſtreſs taken, and notice thereof (with the cauſe of ſuch taking) left at the chief manſion houſe, or other moſt notorious place on the premiſſes, replevy the ſame; in ſuch caſe the perſon diſtraining ſhall, with the ſheriff or under ſheriff of the county, or with the conſtable of the hundred, pariſh, or place, where ſuch diſtreſs ſhall be taken, cauſe the goods and chattels ſo deſtrained to be appraiſed by two ſworn appraiſers (whom ſuch ſheriff, under-ſheriff, or conſtable ſhall ſwear) to appraiſe the ſame truly, according to the beſt of their underſtandings; and after ſuch appraiſement, ſhall ſell the ſame for the beſt price can be gotten for them, for ſatisfaction of the rent, and charges of the diſtreſs, appraiſement, and ſale; leaving the overplus (if any) with the ſheriff, under ſheriff, or conſtable, for the owner's uſe. 2 *W. Seſſ.* 1. *c.* 5. *ſ.* 2. Sale.

M. 13 *G. Griffin* and *Scott.* Treſpaſs for entring his houſe, and keeping poſſeſſion of his goods eight days. The defendant juſtifies under a diſtreſs for Rent. But by the court; The defendant ought to have removed the goods at the five days end; and for the other three he is a treſpaſſer, and there is no juſtification. *Str.* 717.

By the 1 & 2 *P. & M. c.* 12. no perſon ſhall take for keeping in pound, or impounding any diſtreſs, above 4 *d.* for any one whole diſtreſs; and where leſs hath been uſed, there to take leſs; on pain of 5 *l.* to the party grieved, beſides what he ſhall take above 4 *d. ſ.* 2.

XI. Irregularity in the proceedings.

Where any diſtreſs ſhall be made, for any kind of rent juſtly due, and any irregularity ſhall be afterwards done by the party diſtraining, or his agent; the diſtreſs ſhall not be deemed unlawful, nor the diſtrainer a treſpaſſer *ab initio*, but the party aggrieved may recover ſatisfaction for the ſpecial damage, in an action of treſpaſs or on the caſe; and if he recover, he ſhall have full coſts. 11 *G.* 2. *c.* 19. *ſ.* 19. Irregularity.

But no tenant ſhall recover on ſuch action, if tender of amends hath been made before the action brought. *ſ.* 20.

XII. Landlord re-entring on non-payment.

Re-entring.

Where half a year's rent ſhall be in arrear, and the landlord hath right by law to re-enter for non-payment; he may, without any formal demand of re-entry, ſerve a declaration in ejectment, and on recovering judgment and execution, ſhall hold the premiſſes diſcharged from the leaſe. 4 *G.* 2. *c.* 28. *ſ.* 2.

XIII. Caſe of tenant holding over.

Holding over after the term expired.

1. If any tenant for life or years, or other perſon who ſhall come into poſſeſſion by, from, or under him, ſhall wilfully hold over any lands, after the determination of ſuch term, and after demand made, and notice in writing given for delivering the poſſeſſion thereof; he ſhall, from the time that he ſhall ſo hold over, pay double the yearly value thereof, to be recovered by action of debt, in any court of record. 4 *G.* 2. *c.* 28. *ſ.* 1.

But this remedy ſeemeth not altogether adequate to the evil; for three reaſons. 1. Becauſe ſuch action is certainly tedious and expenſive. 2. It is uncertain, when the action is over, whether the tenant will be able to pay. 3. What is chiefly wanted, namely, putting the landlord into poſſeſſion, is not obtained by ſuch action, but for that he ſhall be ſtill to ſeek. A more ſhort and eaſy method of ouſting the tenant of his poſſeſſion, ſeemeth more eligible in the like caſes.

Holding over after having given notice to quit.

2. If any tenant ſhall give notice of his intention to quit the premiſſes, at a time mentioned in ſuch notice, and ſhall not accordingly deliver up the poſſeſſion thereof at the time; he ſhall from thenceforth pay double rent, to be recovered in like manner as the ſingle rent. 11 *G.* 2. *c.* 19. *ſ.* 18.

This clauſe alſo proceedeth upon a Suppoſition, which perhaps may not be true, namely, that the tenant is a man of ſubſtance. It is more likely, that if he were able to live elſewhere, he would not chuſe to hold over under ſuch circumſtances, nor perhaps would the landlord want to be rid of him. The putting him out of poſſeſſion, by ſome expeditious and eaſy method, ſeemeth the more adequate remedy in this caſe alſo, in like manner as is provided in the caſe where the tenant deſerteth the premiſſes, as here followeth.

XIV. Tenant deſerting the premiſſes.

Tenant deſerting.

If any tenant at rack rent, or where the rent reſerved ſhall be full three fourths of the yearly value of the demiſed premiſſes, who ſhall be in arrear for one year's rent, ſhall deſert the premiſſes, and leave the ſame uncultivated or unoccupied, ſo as no ſufficient diſtreſs can be had; two juſtices at the requeſt of the landlord may go and view the ſame, and affix on the moſt notorious part of the premiſſes, notice (A) in writing, what day (at the diſtance of 14 days at the leaſt) they will return to take a ſecond view; and if on ſuch ſecond view, the tenant ſhall not appear

pear and pay the rent, or there ſhall not be ſufficient diſtreſs on the premiſſes, then the juſtices may put the landlord into poſſeſſion, and the leaſe as to ſuch demiſe ſhall from thence be void. 11 *G.* 2. *c.* 19. *ſ.* 16.

But the tenant may appeal to the next juſtice or juſtices of aſſize; who may award coſts to either party. *ſ.* 17.

And the juſtices in this, and all other the like caſes, ought to make a record (B) of the whole proceedings, to be produced afterwards in caſe of an action brought againſt the landlord by ſuch tenant. For the juſtices are not to carry witneſſes with them about the country, to teſtify what they ſhall act as judges of record; nor doth it ſeem requiſite, that they ſhould go and teſtify in a court upon their oaths, what they ſhall have acted in ſuch caſes; but to make a record in writing under their hands and ſeals, of all that hath been done: which record being produced in court, ſeemeth to be the proper evidence in all ſuch caſes, for that the law repoſeth an intire confidence therein, and it ſhall not be gainſaid; otherwiſe there would be no end of things.

XV. Rent in caſe of an execution.

Execution. No goods being on any meſſuage, lands, or tenements, leaſed for life, term of years, at will, or otherwiſe, ſhall be liable to be taken by execution, unleſs the party, at whoſe ſuit the execution is ſued out, ſhall before the removal of ſuch goods from off the premiſſes, pay to the landlord or his bailiff all ſuch rent as ſhall be then due for the premiſſes, provided that it amount not to more than one year's rent; and if the ſaid arrears ſhall exceed one year's rent, then the party paying ſuch landlord one year's rent, may proceed to execute his judgment. 8 *An.* *c.* 14. *ſ.* 1.

XVI. Rent on the death of tenant for life.

Tenant for life dying. Where any tenant for life ſhall die, before or on the day on which the rent was made payable, on any demiſe or leaſe which determined on the death of ſuch tenant for life; the executors or adminiſtrators of ſuch tenant for life, may in an action on the caſe recover, if ſuch tenant for life die on the day on which the ſame was made payable, the whole, or if before ſuch day, then a proportion of ſuch rent, according to the time ſuch tenant for life lived. 11 *G.* 2. *c.* 19. *ſ.* 15.

XVII. Of diſtreſs by warrant of juſtices of the peace.

By the 27 *G.* 2. *c.* 20. It is enacted as follows: *In all caſes where any juſtice of the peace is or ſhall be required or impowered by any act of parliament, to iſſue a warrant of diſtreſs, for the levying of any penalty inflicted, or any ſum of money directed to be paid by ſuch act; it ſhall be lawful for the juſtice granting ſuch warrant, therein to order and direct the goods and chattels ſo to be diſtrained to be ſold and diſpoſed of, within a certain time to be limited in ſuch warrant, ſo as ſuch time be not leſs than four days, nor*

more than eight days, unleſs the penalty or ſum of money for which ſuch diſtreſs ſhall be made, together with the reaſonable charges of taking and keeping ſuch diſtreſs, be ſooner paid.

And the officer making ſuch diſtreſs, ſhall and may deduct the reaſonable charges of taking, keeping, and ſelling ſuch diſtreſs, out of the money ariſing by ſuch ſale; and the overplus (if any) after ſuch charges, and alſo the ſaid penalty or ſum of money, ſhall be ſatisfied and paid, ſhall be returned on demand, to the owner of the goods ſo diſtrained: and the officer executing ſuch warrant, if required, ſhall ſhew the ſame to the perſon whoſe goods are diſtrained, and ſhall ſuffer a copy thereof to be taken.

But this ſhall not extend, to alter any proviſions relating to diſtreſſes to be made for the payment of tithes and church rates by the people called quakers, contained in the acts of the 7 & 8 W. c. 34. *and the* 1 G. ſt. 2. c. 6.

Officer may deduct the reaſonable charges] But here is no power given to the juſtices, to aſcertain ſuch charges; therefore it ſeemeth, that the officer executing the warrant ſhall be the ſole judge thereof in the firſt inſtance, and afterwards, if the owner of the goods diſtrained ſhall be diſſatisfied, the reaſonableneſs thereof ſhall be determined by a judge and jury upon an action brought.

But by ſpecial ſtatutes, this power of aſcertaining the charges of diſtreſs and ſale, is ſometimes given to the juſtices, as is ſet forth in this book under the reſpective titles.

Tithes and church rates by the people called quakers] The above-ſaid ſtatutes of the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6. relate not only to *tithes* and *church rates* (by which laſt ſeemeth only to be underſtood the churchwardens rate for the repair and other uſes of the church), but alſo to any cuſtomary or other rates, dues, or payments, belonging to any church or chapel, which of right by law and cuſtom ought to be paid for the ſtipend or maintenance of any miniſter or curate officiating in any church or chapel. Therefore for any thing that appears from the words of this ſtatute, unleſs it be in the caſe of *tithes* or *church rates*, the juſtices may order the diſtreſs for thoſe other dues and payments to be detained for a certain time, and the officer may deduct the charges not only of *diſtraining*, but alſo of *keeping* and *ſelling* the diſtreſs; whereas by thoſe former acts abovementioned, the officer was only allowed to deduct the neceſſary charges of *diſtraining*.

A. Notice to be affixed on the premiſſes being deſerted.

Abraham Sutcliffe,

TAKE *notice, that upon the complaint of* Eleanor Aſhton *of* Underley *in the county of* Weſtmorland, *widow, made unto us* John Moore, *eſquire, and* Richard Burn, *clerk, two of his majeſty's juſtices of the peace for the ſaid county, that you the ſaid* Abraham Sutcliffe *have deſerted the meſſuage and tenement called* ——— *conſiſting of* ——— *ſituate, lying, and being at* Underley *aforeſaid, in the county aforeſaid, unto you demiſed at rack rent by her the ſaid* Eleanor

Eleanor Aſhton, *and that there is in arrear and due from you the ſaid* A. S. *unto her the ſaid* E. A. *one whole year's rent for the ſaid demiſed premiſſes, and that you have left the ſaid premiſſes uncultivated and unoccupied, ſo that no ſufficient diſtreſs can be had, to countervail the ſaid arrears of rent; we the ſaid juſtices (having no intereſt, nor either of us having any intereſt, in the ſaid demiſed premiſſes) on the ſaid complaint as aforeſaid, and at the requeſt of her the ſaid* E. A. *have this day come upon and viewed the ſaid demiſed premiſſes, and do find the ſaid complaint to be true; and on the 28th day of this preſent month of* February *we will return to take a ſecond view ther of, and if upon ſuch ſecond view, you, or ſome perſon on your behalf, ſhall not appear and pay the ſaid rent in arrear, or there ſhall not be ſufficient diſtreſs on the ſaid premiſſes, then we the ſaid juſtices will put her the ſaid* E. A. *into the poſſeſſion of the ſaid demiſed premiſſes, according to the form of the ſtatute in ſuch caſe made and provided. In witneſs whereof we have hereunto ſet our hands and ſeals, and have cauſed this notice to be affixed on the out door of the manſion houſe, the ſame being the moſt notorious part of the ſaid premiſſes, this fourth day of* February *in the 27th year of the reign of our ſovereign lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king.*

B. Record of putting the landlord into poſſeſſion.

Weſtmorland. BE *it remembred, that on the fourth day of* February *in the 27th year of the reign of our ſovereign lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* Underley *in the ſaid county,* Eleanor Aſhton *of* Underley *aforeſaid, in the county aforeſaid, widow, complained unto us* John Moore, *eſquire, and* Richard Burn, *clerk, two of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, That ſhe the ſaid* Eleanor Aſhton *did demiſe at rack rent unto* Abraham Sutcliffe *of*——— *yeoman, the meſſuage and tenement called*———*conſiſting of*——— *ſituate, lying, and being at* Underley *aforeſaid, in the county aforeſaid; and that on the ſaid fourth day of* February *in the year aforeſaid, there was in arrear and due unto her the ſaid* E. A. *from him the ſaid* A. S. *tenant of the ſaid demiſed premiſſes, one whole year's rent thereof; and that he the ſaid* A. S. *had deſerted the ſaid demiſed premiſſes, and left the ſame uncultivated and unoccupied, ſo as no ſufficient diſtreſs could be had to countervail the ſaid arrears of rent: whereupon the ſaid* E. A. *then and there, to wit, on the ſaid fourth day of* February *in the year aforeſaid, at* Underley *aforeſaid, in the county aforeſaid, requeſted of us ſo as aforeſaid being juſtices, to her in this behalf that a due remedy ſhould be provided, according to the form of the ſtatute in that caſe made. Which complaint and requeſt by us the aforeſaid juſtices being heard, we the ſaid* John Moore, *eſquire, and* Richard Burn, *clerk, juſtices aforeſaid (having no intereſt, nor either of us having any intereſt, in the ſaid demiſed premiſſes) on the ſaid fourth day*

of February *in the year aforeſaid, at* Underley *aforeſaid, in the county aforeſaid, did perſonally go upon and view the ſaid demiſed premiſſes, and then and there upon our own proper view did find the ſaid complaint to be true, and did then and there affix on the moſt notorious part of the ſaid demiſed premiſſes, to wit, upon the out door of the manſion houſe aforeſaid, a notice in writing under our hands and ſeals, that we the ſaid juſtices, on the 28th day of the ſame month of* February *in the year aforeſaid, would return to take a ſecond view thereof. Upon which ſaid 28th day of* February *in the 27th year aforeſaid of our ſaid ſovereign lord, we the ſaid juſtices do now return, come upon, and take a ſecond view of the premiſſes aforeſaid, and there upon our own proper view do find, that he the ſaid* Abraham Sutcliffe *doth not appear, nor any perſon on his behalf doth appear, and pay the ſaid rent in arrear, and that there is no ſufficient diſtreſs upon the premiſſes aforeſaid, nor upon any part thereof, to countervail the ſaid arrears of rent. Therefore we the ſaid juſtices, at* Underley *aforeſaid, in the county aforeſaid, on the 28th day of* February *aforeſaid in the year aforeſaid, do put the ſaid* Eleanor Aſhton *into the poſſeſſion of the ſaid demiſed premiſſes, according to the form of the ſtatute aforeſaid. In witneſs whereof, we the ſaid juſtices, unto this record do ſet our ſeals, at* Underley *aforeſaid, in the county aforeſaid, on the ſaid 28th day of* February *in the 27th year aforeſaid of the reign of our ſaid ſovereign lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king.*

Diſtringas. See Proceſs.

Divine Service. See Publick Worſhip.

Dogs. See Game.

Door breaking open. See Arreſt.

Dower. See Forfeiture.

Drover. See Cattle.

Drunkenneſs. See Alehouſes.

Duelling. See Homicide.

Dyers. See Woollen Manufacture.

Eggs. See Game.
Egyptians. See Vagrants.
Embracery. See Maintenance.

Eſcape.

THIS is to be underſtood of eſcapes in *criminal* caſes; and not in *civil* caſes, as for debt, or the like.

An eſcape is, where one that is arreſted gaineth his liberty, before he is delivered by courſe of law. *Terms de la ley.* Eſcape, what.

Eſcapes are of three kinds. 1. By a perſon who hath the offender in his cuſtody; this is properly called an *eſcape*. 2. Cauſed by a ſtranger; this is commonly called a *reſcue*. 3. By the party himſelf; either without force, which is ſimply an eſcape, or with force, which is *priſon breaking*. *Reſcous* and *priſon breaking* are treated of under their reſpective titles; and this title treats only of eſcapes properly ſo called. Concerning which we will treat in the following order: Several kinds thereof.

I. Of eſcape by the party himſelf.
II. Eſcape ſuffered by a private perſon.
III. Eſcape ſuffered by an officer.
IV. What is a voluntary, and what a negligent eſcape.
V. Concerning the retaking of a perſon eſcaped.
VI. Indictment for an eſcape.
VII. Trial and conviction for an eſcape.
VIII. Puniſhment of an eſcape.
IX. Aiding in attempting to eſcape.

I. Of eſcape by the party himſelf.

As all perſons are bound to ſubmit themſelves to the judgment of the law, and to be ready to be juſtified by it; whoever in any caſe refuſes to undergo that impriſonment which the law thinks fit to put upon him, and frees himſelf from it by any artifice, before ſuch time as he is delivered by due courſe of law, is guilty of a high contempt, puniſhable with fine and impriſonment. 2 *Haw.* 122. Eſcape by the party himſelf.

But eſcape committed by the party himſelf, belongs more properly to the title *Priſon breaking*.

II. Eſcape ſuffered by a private perſon.

Eſcape by a private perſon.

It ſeems to be a good general rule, that wherever any perſon hath another lawfully in his cuſtody, whether upon an arreſt made by himſelf or another, he is guilty of an eſcape, if he ſuffer him to go at large, before he hath diſcharged himſelf of him, by delivering him over to ſome other who by law ought to have the cuſtody of him. 2 *Haw.* 138.

And the law is generally the ſame, in relation to eſcapes ſuffered by private perſons, as by officers. 2 *Haw.* 138.

III. Eſcape ſuffered by an officer.

Eſcape by an officer.

There muſt be a previous arreſt.

1. In order to make it an eſcape, there muſt be an actual arreſt; and therefore, if an officer having a warrant to arreſt a man, ſee him ſhut up in a houſe, and challenge him as his priſoner, but never actually have him in his cuſtody, and the party get free, the officer cannot be charged with an eſcape. 2 *Haw.* 129.

And juſtifiable.

2. And as there muſt be an actual arreſt, ſuch arreſt muſt be alſo juſtifiable; for if it be either for a ſuppoſed crime, where no ſuch crime was committed, and the party neither indicted nor appealed, or for ſuch a ſlight ſuſpicion of an actual crime, and by ſuch an irregular mittimus as will neither juſtify the arreſt nor impriſonment, the officer is not guilty of an eſcape, by ſuffering the priſoner to go at large. 2 *Haw.* 129.

And for a criminal offence.

3. And as the impriſonment muſt be juſtifiable, ſo it muſt be alſo for a criminal offence. 2 *Haw.* 129.

And not detained only for fees.

4. Alſo if a priſoner be acquitted, and detained only for his fees, it will not be criminal to ſuffer him to eſcape, tho' the judgment were, that *he be diſcharged paying his fees*, ſo that till they be paid, the firſt impriſonment continued lawful as before; for inaſmuch as he is detained, not as a criminal, but only as a debtor, his eſcape cannot be more criminal than that of any other debtor: Yet if a perſon convicted of a crime, be condemned to impriſonment for a certain time, and alſo *till he pay his fees*, and he eſcape after ſuch time is elapſed, without paying them, perhaps ſuch eſcape may be criminal, for that it was part of the puniſhment that the impriſonment be continued till the fees ſhould be paid; but it ſeems, that this is to be intended where the fees are due to others as well as to the gaoler, for otherwiſe the gaoler will be the only ſufferer by the eſcape, and it will be hard to puniſh him for ſuffering an injury to himſelf only, in the nonpayment of a debt in his power to releaſe. 2 *Haw.* 129, 130.

Too much liberty, an eſcape.

5. Alſo, it is an eſcape in ſome caſes, to ſuffer a priſoner to have greater liberty, than by the law he ought to have; as to admit a perſon to bail, who by law ought not to be bailed, but to be kept in cloſe cuſtody. 2 *Haw.* 130.

So if a gaoler, or other officer, ſhall licenſe his priſoner to go abroad for a time, and to come again; this is an eſcape, becauſe the priſoner is found out of the bounds of his priſon, tho' the priſoner return again, according as he ſhall be preſcribed. *Dalt. c.* 159.

6. If

6. If the gaoler ſo cloſely purſue the priſoner who flies from him, that he retakes him, without loſing ſight of him, the law looks on the priſoner ſo far in his power all the time, as not to adjudge ſuch a flight to amount at all to an eſcape; but if the gaoler once loſe ſight of the priſoner, and afterwards retake him, he ſeems in ſtrictneſs to be guilty of an eſcape. And if he kill him in the purſuit, he is in like manner guilty of an eſcape, tho' he never loſt ſight of him, and could not otherwiſe take him, not only becauſe the king loſes the benefit he might have had by the forfeiture on his attainder, but alſo becauſe the publick juſtice is not ſo well ſatisfied by the killing him in ſuch an extrajudicial manner. 2 *Haw.* 130. Loſing ſight, an eſcape.

IV. What is a voluntary, and what a negligent eſcape.

1. Wherever an officer, who hath the cuſtody of a priſoner, charged with and guilty of a capital offence, doth knowingly give him his liberty, with an intent to ſave him from his trial or execution, this is a voluntary eſcape. 2 *Haw.* 130. Voluntary eſcape, what.

2. A negligent eſcape is, when the party arreſted or impriſoned doth eſcape againſt the will of him that arreſted or impriſoned him, and is not freſhly purſued and taken again, before he hath loſt the ſight of him. *Dalt. c.* 159. Negligent eſcape, what.

3. If the conſtable or other officer, ſhall voluntarily ſuffer a thief, being in his cuſtody to go into the water to drown himſelf, this eſcape is felony in the conſtable, and the drowning is felony in the thief: Otherwiſe if the thief ſhall ſuddenly without the aſſent of the conſtable, kill, hang, or drown himſelf, this is but a negligent eſcape in the conſtable. *Dalt. c.* 159. Suffering a priſoner to kill himſelf.

V. Concerning the retaking of a perſon eſcaped.

1. If an officer hath arreſted a man by virtue of a warrant, and then taketh his promiſe that he will come again, and ſo letteth him go; the officer cannot after arreſt or take him again by force of his former warrant, for that this was by the conſent of the officer: But if he return, and put himſelf again under the cuſtody of the officer, it ſeems that it may be probably argued, that the officer may lawfully detain him, and bring him before the juſtice in purſuance of the warrant. *Dalt. c.* 169. 1 *Haw.* 81. Let go voluntarily, cannot be retaken.

2. But if the party arreſted had eſcaped of his own wrong, without the conſent of the officer, now upon freſh ſuit, the officer may take him again and again, ſo often as he eſcapeth, altho' he were out of view, or that he ſhall fly into another town or county, and bring him before the juſtice upon whoſe warrant he was firſt arreſted. *Dalt. c.* 169. Freſh ſuit.

And it is ſaid generally in ſome books, that an officer who hath negligently ſuffered a priſoner to eſcape, may retake him wherever he finds him, without mentioning any freſh purſuit; and indeed ſince the liberty gained by the priſoner is wholly owing to his own wrong, there ſeems to be no reaſon he ſhould take any manner of advantage from it. 2 *Haw.* 131, 132.

3. And

Breaking open doors to retake.

3. And wherever a perſon is lawfully arreſted for any cauſe, and afterwards eſcapes, and ſhelters him in an houſe, the doors may be broke open to take him, on refuſal of admittance. 2 *Haw.* 87.

Retaking excuſeth not the eſcape.

4. It is perhaps the better opinion, that wherever a priſoner, by the negligence of his keeper, gets ſo far out of his power, that the keeper loſes ſight of him, the keeper is puniſhable for the eſcape, notwithſtanding he retook him immediately after: And it is clear, that he cannot excuſe himſelf from an eſcape, by killing a priſoner in the purſuit, tho' he could not poſſibly retake him; but muſt in ſuch caſe be content to ſubmit to ſuch puniſhment, as his negligence ſhall appear to deſerve. 2 *Haw.* 132.

VI. Indictment for an eſcape.

Indictment.

It ſeems clear, that every indictment (A) for an eſcape, whether negligent or voluntary, muſt expreſly ſhew, that the priſoner was actually in the defendant's cuſtody for ſuch a crime; and that he went at large; And if for a voluntary eſcape, that the defendant feloniouſly and voluntarily ſuffered him to go at large; and muſt ſet forth, not the felony in general, but the particular kind of felony: But it ſeems queſtionable, whether ſuch certainty, as to the nature of the crime, be neceſſary in an indictment for a negligent eſcape; for that it is not material in this caſe, whether the perſon who eſcaped were guilty or not. 2 *Haw.* 133, 229.

VII. Trial and conviction for an eſcape.

Gaoler not producing him, a conviction.

1. If the priſoner be of record in a court, and the gaoler being called, cannot give an account where he is, this is a conviction of an eſcape; but ſeems not a conviction of a voluntary eſcape, unleſs the gaoler confeſſeth it: And the gaoler may be fined in ſuch a caſe; but not convicted of felony, without indictment or preſentment. 1 *H. H.* 599, 603.

Felony to be tried before the eſcape.

2. And it ſeems to be clear, that a keeper who voluntarily ſuffers another to eſcape, who was in his cuſtody for felony, cannot be arraigned for ſuch eſcape as for felony, until the principal be attainted, for that the felony of the priſoner ſhall not be tried between the king and the keeper, becauſe the priſoner is a ſtranger thereunto; yet he may be indicted and tried for it as a miſpriſion, before the attainder of the principal offender. 2 *Haw.* 135. 2 *Inſt.* 591, 592.

VIII. Puniſhment of an eſcape.

Puniſhment of eſcape before arreſt.

1. If a felon eſcapes before arreſt, it is not puniſhable in him as felony; but for the flight he forfeits his goods when preſented. *Hale's Pl.* 111.

Of eſcape by a private perſon.

2. If a private perſon arreſt a felon, and he eſcape by force from him, the townſhip ſhall be amerced, but it ſeems it excuſeth the party, becauſe he cannot raiſe power to aſſiſt him: but if a conſtable,

conſtable, or other officer, hath the cuſtody of a priſoner, bringing him to the gaol, it ſeems that a ſimple eſcape by the reſcue of the priſoner himſelf, doth not wholly excuſe him, becauſe he may take ſufficient ſtrength to his aſſiſtance. 1 *H. H.* 601.

3. Wherever a perſon is found guilty upon an indictment or preſentment of a negligent eſcape of a criminal actually in his cuſtody, he is puniſhable by fine and impriſonment, according to the quality of the offence. 2 *Haw.* 136, 139. 1 *H. H.* 600, 604. Of a negligent eſcape.

And it ſeems to be the better opinion, that a ſheriff is as much liable to anſwer for a negligent eſcape ſuffered by his bailiff, as if he had actually ſuffered it himſelf, and that the court may charge either the ſheriff or bailiff for ſuch an eſcape; and if a deputy gaoler be not ſufficient to anſwer a negligent eſcape, his principal muſt anſwer for him. 2 *Haw.* 135.

Note; Mr. *Hawkins*, altho' he is one of the moſt accurate of all writers, yet hath inſerted in this place certain penalties for eſcapes, which were expired above 200 years before. 2 *Haw.* 137.

If a priſoner for felony break the gaol, this ſeems to be a negligent eſcape in the gaoler, becauſe there wanted either that due ſtrength in the gaol, that ſhould have ſecured him, or that due vigilance in the gaoler or his officers to have prevented it; and therefore it is lawful for the gaoler to hamper them with irons to prevent their eſcape; for if gaolers might not be puniſhed for this as a negligent eſcape, they would be careleſs either to ſecure their priſoners, or to retake them that eſcape. 1 *H. H.* 601.

4. It ſeems to be generally agreed, that a voluntary eſcape ſuffered by an officer, amounts to the ſame kind of crime, and is puniſhable in the ſame degree, as the offence of which the party was guilty, and for which he was in cuſtody, whether it be treaſon, felony, or treſpaſs. 2 *Haw.* 134. Of a voluntary eſcape.

But yet a voluntary eſcape is no felony, if the act done were not felony at the time of the eſcape made, as in caſe of a mortal wound given, and the party not dying till after the eſcape; but the officer may be fined to the value of his goods. *Dalt.* c. 159.

Alſo, a voluntary eſcape ſuffered by one who wrongfully takes upon him the keeping of a gaol, ſeems to be puniſhable in the ſame manner, as if he was never ſo rightfully intitled to ſuch cuſtody; for that the crime is in both caſes of the ſame ill conſequence to the publick: and there ſeems to be no reaſon that a wrongful officer ſhould have greater favour than a rightful, and that for no other reaſon but becauſe he is a wrongful one. 2 *Haw.* 134.

But it ſeemeth to be clear, that no one is puniſhable as for felony, for the voluntary eſcape of a felon, but the perſon only who is actually guilty of it; and therefore that the principal gaoler is only fineable for a voluntary eſcape ſuffered by his deputy; for that no one ſhall ſuffer capitally for the crime of another. 2 *Haw.* 135.

And therefore, altho' in all civil cauſes, the ſheriff is to be reſponſible, or the gaoler, at election, yet if the gaoler do voluntarily ſuffer a felon in his cuſtody to eſcape; this, inaſmuch as it reacheth to life, is felony only in the gaoler, that was immediately truſted with the cuſtody, and not in the ſheriff. 1 *H. H.* 597.

For the eſcape muſt be voluntarily permitted in him that permitted it, which could not be in the high ſheriff, tho' it were ſuch in the gaoler, for he was not privy to it, and therefore could not do it felonioufly; but it was a negligent eſcape in him, in truſting ſuch a perſon with the cuſtody of his priſoners, that would be falſe to his truſt, and therefore the ſheriff ſhall pay, but not corporally ſuffer for the miſcarriage of his gaoler. 1 *H. H.* 597, 598.

But altho' the felony for which a man is committed, be not within clergy; yet the perſon who voluntarily ſuffers him to eſcape, ſhall have the benefit of clergy. 1 *H. H.* 599.

IX. Aiding in attempting to eſcape.

Aiding in attempting to eſcape.

By the 16 *G.* 2. *c.* 31. If any perſon ſhall aſſiſt any priſoner to *attempt* his eſcape from any gaol, tho' no eſcape be actually made, if ſuch priſoner was then attainted or convicted of treaſon or felony (except petty larceny), or lawfully committed to, or detained in any gaol, for treaſon or felony (except petty larceny) expreſſed in the warrant of commitment; he ſhall be guilty of felony, and be tranſported for ſeven years: And if ſuch priſoner was then convicted of, or detained in gaol for petty larceny, or any other crime not being treaſon or felony, expreſſed in the warrant of commitment, or was then in gaol for debt amounting to 100*l.* he ſhall be guilty of a miſdemeanor, and be liable to fine and impriſonment.

And if any perſon ſhall convey, or cauſe to be conveyed, any *diſguiſe, inſtrument, or arms*, to any priſoner in gaol, or to any other perſon there for his uſe, without conſent of the keeper; ſuch perſon, altho' *no eſcape or attempt* be actually made, ſhall be deemed to have delivered ſuch diſguiſe, inſtrument, or arms, with an intent to aſſiſt ſuch priſoner to eſcape or attempt to eſcape; and if ſuch priſoner then was attainted or convicted of treaſon or felony (except petty larceny), or lawfully detained in gaol, for treaſon or felony (except petty larceny) expreſſed in the warrant of commitment;—he ſhall be guilty of felony, and be tranſported for ſeven years: But if the priſoner was then convicted or detained for petty larceny, or any other crime not being treaſon or felony, expreſſed in the warrant of commitment, or for debt amounting to 100*l.* he ſhall be guilty of a miſdemeanor, and liable to fine and impriſonment.

And if any perſon ſhall aſſiſt any priſoner to attempt to eſcape *from any conſtable*, or other perſon, who ſhall have the lawful charge of him, in order to carry him to gaol, by virtue of a warrant of commitment for treaſon or felony (except petty larceny); or if any perſon ſhall aſſiſt any felon to attempt his eſcape

from

from on board any *boat or veſſel carrying felons for tranſportation*, or from the *contractor* for the tranſportation of ſuch felons, or his agents, he ſhall be guilty of felony, and be tranſported for ſeven years.

All proſecutions on this act to be commenced within a year after the offence committed.

A. Indictment againſt a conſtable for an eſcape.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *in the county aforeſaid, one* A. I. *of* ——— *came before* J. P. *eſquire, then and yet one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; and the ſaid* A. I. *did, then and there, on his oath, before the ſame juſtice, charge, accuſe, and give information againſt one* A. O. *of* ——— *aforeſaid in the county aforeſaid, yeoman, for a certain miſdemeanor, in taking fiſh out of the pond of* ——— *at* ——— *in the ſaid county* [or, as the offence ſhall be:] *Whereupon he the ſaid* J. P. *the juſtice aforeſaid, did then and there, to wit, at* ——— *aforeſaid, in the county aforeſaid, make a certain warrant, under his hand and ſeal, in due form of law, directed to the conſtable of* ——— *aforeſaid, in the county aforeſaid, thereby requiring him the ſaid conſtable to take the body of the ſaid* A. O. *and bring him before the ſaid* J. P. *the juſtice aforeſaid, to anſwer to ſuch matters and things as ſhould be alledged againſt him, touching the ſaid miſdemeanor; Which ſaid warrant, afterwards, to wit, on the ſame day and year abovementioned, at* ——— *aforeſaid, in the county aforeſaid, was delivered to one* A. C. *then being conſtable of* ——— *aforeſaid, in due form of law, to be executed; by virtue of which ſaid warrant the ſaid* A. C. *afterwards, to wit, on the ſaid* ——— *day of* ——— *in the year aforeſaid, at* ——— *aforeſaid, in the ſaid county, did take and arreſt the body of the ſaid* A. O. *and him the ſaid* A. O. *in his cuſtody for the cauſe aforeſaid, had: Nevertheleſs, the ſaid* A. C. *of* ——— *aforeſaid, in the county aforeſaid, yeoman, afterward, to wit, on the ſaid* ——— *day of* ——— *in the year aforeſaid, the duty of his office in that part not regarding, at* ——— *aforeſaid, in the county aforeſaid, unlawfully and negligently did permit the ſaid* A. O. *to eſcape, and go at large, out of the cuſtody of him the ſaid* A. C. *to the great hindrance of juſtice, in contempt of our ſaid lord the king, and his laws, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Eſcheat. See Forfeiture.

Eſtreat.

Eſtreat, what.

1. ESTREAT *(Extractum)* is uſed for the true copy or note of ſome original writing or record, and eſpecially of fines and amerciaments, impoſed in the rolls of a court, to be levied by the bailiff or other officer.

Making out the eſtreats.

2. The juſtices and judges before whom fines or amerciaments ſhall be, ſhall charge the clerks of the eſtreats, by their oath to be made, that they make the rolls of ſuch eſtreats diſtinctly by expreſs words, of the cauſe of the loſs, of the term of the year, and the nature of the writ, and betwixt what parties ſuch iſſues or amerciaments ſhall be loſt, as well in the king's ſuit, as in the ſuit of the party. 7 *H.* 4. *c.* 3.

Delivering the ſame to the ſheriff.

3. All clerks of the peace, and town clerks, ſhall deliver to the ſheriff within 20 days after *Sep.* 29. yearly, a perfect eſtreat or ſchedule of all fines, iſſues, amerciaments, and other forfeitures whatſoever, forfeited in any ſeſſions before *Michaelmas*; on pain of 50*l.* half to the king, and half to him that ſhall ſue. 22 & 23 *C.* 2. *c.* 22. *ſ.* 7, 8.

And into the court of exchequer.

4. And ſhall alſo yearly, on or before the ſecond *Monday* after the morrow of *All Souls*, deliver into the court of exchequer, a duplicate, certificate, and eſtreat of ſuch eſtreats and ſchedules, ſo delivered to the ſheriff; on the like pain of 50*l.* *id. ſ.* 8. And likewiſe they may be further amerced by the barons of the exchequer. 3 *G.* *c.* 15. *ſ.* 12.

And upon delivery thereof, they ſhall take the following oath, to be adminiſtred by one of the barons:

"You ſhall ſwear, that theſe eſtreats now by you delivered, "are truly and carefully made up and examined, and that all "fines, iſſues, amerciaments, recognizances, and forfeitures which "were ſet, loſt, impoſed, or forfeited, and in right and due "courſe of law ought to be eſtreated in the court of exchequer, "are, to the beſt of your knowledge and underſtanding, therein "contained; and that in the ſame eſtreats are alſo contained and "expreſſed all ſuch fines as have been paid into the court, from "which the ſaid eſtreats are made, without any wilful or fraudu-"lent diſcharge, omiſſion, *miſnomer*, or defect whatſoever: So "help you god." 4 & 5 *W.* *c.* 24. *ſ.* 5.

Penalty of making default.

5. And if he ſhall withhold, or miſcertify the ſame, he ſhall forfeit treble; half to the king, and half to him that ſhall ſue; and ſhall alſo loſe his office, and be incapable to hold any office in the revenue. 22 & 23 *C.* 2. *c.* 22. *ſ.* 9.

Proceſs for levying.

6. Where any fine or forfeiture ſhall be paid to the ſheriff, clerk of the peace or other officer, and ſo certified into the exchequer; proceſs ſhall be awarded to the ſheriff againſt ſuch perſon for levying the ſame. 22 & 23 *C.* 2. *c.* 22. *ſ.* 10.

Sheriff's duty in levying.

7. And in levying, the ſheriff ſhall ſhew the eſtreats under the ſeal of the exchequer, to the party indebted; on pain of treble damages to the party, and fine to the king, on conviction before the juſtices of the peace, or other juſtices. 42 *Ed.* 3. *c.* 9.

8. And

8. And the ſheriff ſhall make no eſtreats to levy his own amerciaments (that is to ſay, in the torn), till two juſtices (1 Q.) to be named at *Michaelmas* ſeſſions by the *cuſtos rotulorum*, or in his abſence by the eldeſt in the commiſſion, have inſpected his books; and the ſaid eſtreats ſhall be indented betwixt the ſaid juſtices and ſheriff, and ſealed with their ſeals, the one part to remain with the juſtices, and the other with the ſheriff: And the perſons who ſhall gather the ſaid amerciaments, ſhall be ſworn by the ſaid juſtices, that they ſhall take no more than is forfeited, and contained in the ſaid eſtreats. 11 *H.* 7. *c.* 15. Eſtreats in the torn.

Form of the eſtreat.

Weſtmorland. A N *extract of all the iſſues, fines, amerciaments, and recognizances, ſet, loſt, impoſed, and forfeited to our ſovereign lord the king, at the general quarter ſeſſions of the peace of our ſaid lord the king, holden at* ——— *in and for the ſaid county of* ——— *on* ——— *the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *before* ——— *eſquires, juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed,* John Robinſon, *gentleman, clerk of the peace for the county aforeſaid, then and there attending:*

	l.	s.	d.
Of A. O. *late of* ——— *in the ſaid county, labourer, for a treſpaſs and aſſault at* ——— *aforeſaid in the ſaid county, whereof he is indicted and convicted; and his fine ſet at five ſhillings, which he paid to the ſheriff in court* —— —— —— —— —— ——	0	5	0
Of A. O. *of* ——— *in the ſaid county, yeoman, becauſe he came not now here to anſwer to ſuch things as againſt him, on the part of our ſaid lord the king, ſhould be objected, as by a certain recognizance taken before* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, he undertook*	10	0	0
Of A. S. *of* ——— *in the ſaid county, yeoman, one of the pledges of the ſaid* A. O. *becauſe he had him not to anſwer as above* —— —— —— —— —— ——	5	0	0
Of B. S. *of* ——— *in the ſaid county, yeoman, the other of the pledges of the ſaid* A. O. *for the like* ——	5	0	0

Evidence.

I. Of evidence in general.
II. Of written evidence.
III. Of the evidence of witneſſes.
IV. Of proceſs to cauſe witneſſes to appear.
V. Of the manner of giving evidence.

I. Of evidence in general.

Evidence, what. 1. EVIDENCE in legal underſtanding, doth not only contain matters of record, as letters patents, fines, recoveries, inrollments, and the like, and writings under ſeal, as charters and deeds, and other writings without ſeal, as court rolls, accounts, and the like; but in a larger ſenſe it containeth alſo the teſtimony of witneſſes, and other proofs to be produced and given, for the finding of any iſſue joined between the parties. And it is called *evidence*, becauſe thereby the point in iſſue is to be made evident to the jury. 1 *Inſt.* 283.

The beſt evidence is required. 2. It is a general rule in all caſes, civil and criminal, that the beſt evidence that may be had, or that the nature of the thing will bear, is to be given: and it is upon this reaſon, that a copy of a record is admitted, becauſe one cannot have the record it ſelf; but a copy of a copy will not do. *Law of Evid.* 286.

Preſumptive evidence. 3. Many times juries, together with other matter, are much induced by preſumptions; whereof there are three ſorts, violent, probable, and light or temerary. Violent preſumption many times amounts to full proof; as if one be run thro' the body with a ſword in a houſe, whereof he inſtantly dieth, and a man is ſeen to come out of that houſe, with a bloody ſword, and no other man was at that time in the houſe. Probable preſumption moveth little. But light, or temerary preſumption moveth not at all. 1 *Inſt.* 6.

If all the witneſſes to a deed be dead (as no man can keep his witneſſes alive, and time weareth out all men) then violent preſumption, which ſtands for a proof, is continual and quiet poſſeſſion; altho' the deed may receive credit from a comparing of ſeals, writing, and the like. 1 *Inſt.* 6.

What number of witneſſes are required. 4. The common law did not require any certain number of witneſſes, for the trial of any crime whatſoever. 2 *Haw.* 428.

And before a juſtice of the peace in divers caſes, one witneſs is ſufficient to convict an offender; the ſame being directed by ſpecial ſtatutes.

But in caſe of high treaſon, whereby corruption of blood ſhall be made, no perſon ſhall be attainted, but upon the oaths of two witneſſes, either both to the ſame overt act, or one of them to one, and the other of them to another overt act of the ſame treaſon. 7 *W.* c. 3. *ſ.* 2.

And

And by 29 *C.* 2. *c.* 3. *ſ.* 5. Deviſes of lands ſhall be atteſted by three witneſſes at the leaſt.

II. Of written evidence.

1. A *private* act of parliament, that concerned *Rocheſter* bridge, tho' printed by *Raſtal*, was not allowed in evidence, not being examined by the record. Otherwiſe of *general* ſtatutes; there the printed book is good evidence. *Tr. per pais* 348. Act of parliament.

And there are very many of the old ſtatutes, which are admitted and obtain as ſuch, tho' there be no record at this day extant thereof, nor yet any other written evidence of the ſame, but what is in a manner only traditional, as namely, ancient copies, tranſcripts, books, pleadings, and the common received opinion and reputation, and the approbation of the judges learned in the laws. For the judges and courts of juſtice are *ex officio* bound to take notice of publick acts of parliament, and whether they are truly pleaded or not, and therefore they are the triers of them. But it is otherwiſe of private acts of parliament, for they may be put in iſſue, and tried by the record upon *nul tiel* record pleaded. *Hale's Hiſt. Com. L.* 15, 16.

2. Records prove themſelves, and cannot be proved by witneſſes. But copies of them muſt be proved by witneſſes, and then they are good evidence. No razure or interlining ſhall be intended in them. But the ſureſt way is, to exemplify a record under the great ſeal, or at leaſt under the ſeal of the court. 10 *Co* 92. Record.

And nothing ſhall be admitted as evidence of what was done at another trial, till the record of that trial be produced. *Read. Evid.*

3. A record of the ſeſſions was allowed in evidence, to prove that a perſon had not taken the oaths. 1 *Salk.* 284. Record of ſeſſions.

4. But a private book of entries ſhall not be allowed for that purpoſe: Thus in the caſe of *The Queen* and *Mead*, the defendant, and eight others, were incorporated under an act made 39 *El.* by the name of the ſurveyors of the highways at *Aileſbury* in the county of *Bucks*, and were truſtees of a charity called *Bedford's* gift. An information was preferred againſt the defendant, for executing this office, being an office of truſt, without having taken the oaths, contrary to the 25 *C.* 2. *c.* 2. To which he pleaded not guilty. And now it was moved for a rule, that the proſecutor might have two books produced, which theſe ſurveyors kept, in which they entred their elections, and alſo their receipts and diſburſements; and that he might take copies of what he thought neceſſary, and that the books might be produced at the next aſſizes at the trial. But it was denied by the court; becauſe they are perfectly of a private nature, and it would be to make a man produce evidence againſt himſelf in a criminal proſecution. L. *Raym.* 927. Private book of entries.

5. By the 7 *J.* *c.* 12. No tradeſman or handicraftſman ſhall be allowed to give his ſhop book in evidence, on an action for money due for wares delivered, or for work done, above one Shop book.

year before the action brought. But this not to extend to any trading between merchant and merchant, merchant and tradesman, or between tradesman and tradesman, for any thing directly falling within the compass of their mutual trades and merchandize.

In the case of *Pitman* and *Maddox*, 11 *W.* A shop book was allowed for evidence, it being proved that the servant that writ the book was dead, and this was his hand, and he accustomed to make the entries, and no proof was required of the delivery of the goods; and *Holt* C. J. said, it was as good evidence as the proof of a witness's hand to an obligation: and he held, that tho' the statute of the 7 *J.* says, a shop book shall not be evidence after the year, yet it is not of it self evidence within the year. 2 *Salk.* 690.

Book of accounts. 6. A man's book of accounts is no evidence for the owner of the book, but for the adverse party; for his book cannot be of better credit than his oath, which would not serve in his own case. *Tr. per pais* 348.

Deed. 7. Every ancient deed proves it self, where possession has gone accordingly. But later deeds must be proved by witnesses. If the witnesses are dead, their handwriting must be proved. A deed cannot be proved by a copy; yet in cases of extremity, as where the deed was burnt, or lost by some such accident, the judges may at their discretion allow it to be proved by witnesses. *Wood* 1025.

And it was holden for law, by *Vernon* judge of assize, that where the defendant himself hath the deed which concerns the land in question, and will not produce it; in such a case, the copy thereof will be permitted to be given in evidence; and so it was, and the witness swore it once in his hand, and that the copy produced was a true copy of the deed, and himself did examine it. *Clayt.* 15.

And the counterpart of an ancient deed which is lost, may be good evidence with other circumstances: but not of it self, without other circumstances. 6 *Mod.* 225.

Indenture with the seals torn off. 8. An indenture to guide the uses of a common recovery, was offered in evidence, but the seals were torn off; yet it being proved to have been done by a little boy, it was allowed to be read. *Palm.* 402.

Will. 9. The probate of a will, under which a title to land is made, is not evidence; but the will it self must be produced. 1 *Keb.* 117.

Letters patents. 10. If upon collateral issue it is to be proved, that such a one was justice of the peace, baronet, or the like; common reputation is sufficient proof, without shewing the commission, or letters patent of the creation. *Tr. per pais* 347.

Indorsement of interest on a bond. 11. *M.* 11 *G. Serle* and Lord *Barrington.* The indorsement on a bond by the obligee, of payment of interest, was allowed to be given in evidence by his administrator, to take off the presumption from the length of time. L. *Raym.* 1371.

Information before a justice of peace. 12. It seems settled, that the examination of an informer taken upon oath, and subscribed by him, either before a coroner upon

upon an inquiſition of death, or before juſtices of the peace, in purſuance of the ſtatutes of *Ph. & M.* upon a bailment or commitment for any felony, may be given in evidence at the trial, if it be made out by oath to the ſatisfaction of the court, that ſuch informer is dead, or unable to travel, or kept away by the means or procurement of the priſoner, and that the examination offered in evidence is the very ſame that was ſworn before the coroner or juſtice, without any alteration whatſoever. 2 *Haw.* 429.

But it hath been adjudged, that it is not ſufficient to authorize the reading of ſuch examination, to make oath that the proſecutors have uſed all their endeavours to find the witneſs, but cannot find him. 2 *Haw.* 430.

But it is ſaid to have been adjudged, by the court of king's bench, in the 7 *W.* (1 *Salk.* 281.) upon advice with the juſtices of the common pleas, on an indictment for a *libel*, that depoſitions taken before a juſtice of the peace, relating to the fact, could not be given in evidence, tho' the deponent were dead; and that the reaſon why ſuch depoſitions may be given in evidence in *felony*, depends upon the ſtatutes of *P. & M.* and that this cannot be extended farther than the particular caſe of felony. But in the report of this caſe, 5 *Mod.* 165. it is ſaid, that the reaſon why ſuch depoſitions could not be read, was becauſe the defendant was not preſent when they were taken, and therefore had not the benefit of a croſs examination. 2 *Haw.* 430.

Depoſitions in perpetuam rei memoriam.

13. Depoſitions *in perpetuam rei memoriam*, are not evidence, ſo long as the witneſſes live. 1 *Salk.* 286.

Inſcription on a grave ſtone.

14. A copy of an inſcription on a grave ſtone, has been allowed to be given in evidence. 2 *Roll's Abr.* 686, 7.

Almanack.

15. The examination of an almanack, that ſuch a day of the month was *Sunday*, was ruled to be ſufficient; and that a trial of this by a jury is not neceſſary, altho' it is a matter of fact. *Cro. El.* 227.

Father's entry of the child's birth.

16. And an almanack wherein the father had writ the day of the nativity of his ſon, was allowed as evidence to prove the nonage of the ſon. *Raym.* 84.

Nomenclator of Weſtminſter ſchool.

17. The nomenclator of *Weſtminſter* ſchool was produced to prove, that the *Latin* word *capital* (uſed to ſignify a *coif*) is a noun ſubſtantive; and the court allowed that authority before *Rider's* dictionary. *E.* 16 C. 2. *Tr. per pais* 25.

Camden's Britannia.

18. *Camden's Britannia* was offered in evidence, to prove a particular cuſtom, but refuſed; for the court held, that a general hiſtory might be given in evidence to prove a matter relating to the kingdom in general, becauſe the nature of the thing requires it; but not to prove a particular right or cuſtom: So in the caſe of St. *Katharine's* hoſpital, *Hale* Ch. J. allowed a chronicle to be evidence of a particular point of hiſtory in *Edward* the third's time: So a year book may be evidence, to prove the courſe of the court. And in this caſe it was admitted, that heralds books are good evidence as to pedigrees, and pariſh regiſters as to births and marriages, upon the nature of the thing. But in the exchequer, the queſtion being whether the *Abbey de Sentibus* was an inferior abbey or not, *Dugdale's Monaſticon* was refuſed for

evidence, becauſe the original records might be had in the augmentation office. 1 *Salk.* 281. 7 *W. Stainer* and *The burgeſſes of Droitwich.*

Similitude of hands.

19. It ſeems to have been generally holden, ſince the reverſal of the attainder of *Algernon Sidney*, that ſimilitude of hands is not evidence in any criminal caſe, whether capital or not capital. 2 *Haw.* 431. L. *Raym.* 39.

Letter.

20. Tho' one conſent to have a letter read, yet the jury, on pain of attaint, are not bound to find it. 1 *Keb.* 249.

III. Of the evidence of witneſſes.

Confeſſion.

1. It ſeems that the confeſſion of the defendant, whether taken on an examination before juſtices of the peace, in purſuance of the 1 & 2 *P. & M. c.* 13. or 2 & 3 *P. & M. c.* 10. upon a bailment or commitment for felony, or taken by the common law upon an examination for other crimes not within thoſe ſtatutes, or in diſcourſe with private perſons, hath always been allowed to be given in evidence, againſt the party confeſſing, but not againſt others. 2 *Haw.* 429.

But wherever a man's confeſſion is made uſe of againſt him, it muſt be all taken together, and not by parcels. 2 *Haw.* 429.

Witneſs of kin to the party.

2. It is to be obſerved, that there be many circumſtances that diſable a juror, that are not ſufficient exceptions againſt a witneſs: Thus the exception of kindred, is a good cauſe of challenge againſt a juror, but not againſt a witneſs; therefore the father may be a competent witneſs for or againſt his ſon, or the ſon for or againſt his father. Theſe and the like exceptions may be to the credit or credibility of the witneſs, but are not exceptions againſt his competency. 2 *H. H.* 276.

For, that I may obſerve it once for all, the exceptions to a witneſs are of two kinds, 1. Exceptions to the credit of the witneſs, which do not at all diſable him from being ſworn, but yet may blemiſh the credibility of his teſtimony; and in ſuch caſe the witneſs is to be allowed, but the credit of his teſtimony is left to the jury. 2. Exceptions to competency of the witneſs, which do exclude him from giving his teſtimony, and of theſe exceptions the court is the judge. 2 *H. H.* 276, 277.

Witneſs infamous.

3. It ſeems agreed, that an attainder, judgment, or conviction of treaſon, felony, piracy, præmunire, perjury, or forgery on 5 *El.* and alſo a judgment in attaint for giving a falſe verdict, or in conſpiracy at the ſuit of the king; and alſo judgment for any crime whatſoever to ſtand in the pillory, or to be whipped or branded, are good cauſes of exception againſt a witneſs, while they continue in force. 2 *Haw.* 432.

But it is agreed, that no ſuch conviction or judgment can be made uſe of to this purpoſe, unleſs the record be actually produced in court. 2 *Haw.* 433.

Alſo, it is a general rule, that a witneſs ſhall not be aſked any queſtion, the anſwering to which might oblige him to accuſe himſelf of a crime; and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs

of

of particular crimes, whereof he never was convicted. 2 *Haw.* 433.

And a man ſhall not be permitted to ſwear, that he was ſuborned and perjured. *St. Tr. V.* 3. 427.

And Lord *Coke* ſays, a witneſs alledging his own infamy or turpitude, is not to be heard. 4 *Inſt.* 279.

It ſeems clear at this day, that outlawry in a perſonal action is not a good exception againſt a witneſs, as it is againſt a juror. 2 *Haw.* 433.

A perſon convicted of felony, who is admitted to his clergy, and burnt in the hand, is thereby re-enabled to be a witneſs. 2 *Haw.* 433.

And it ſeems agreed, that the king's pardon of treaſon or felony, after a conviction or attainder reſtores the party to his credit. 2 *Haw.* 433.

4. It ſeems agreed to be a good exception, that a witneſs is an infidel; that is, as it ſeemeth, that he believes neither the old nor new teſtament to be the word of god, on one of which our laws require the oath ſhould be adminiſtred. 2 *Haw.* 434. Witneſs an infidel.

5. Want of diſcretion is a good exception againſt a witneſs; on which account alone it ſeems, that an infant may be excepted againſt. 2 *Haw.* 434. Witneſs wanting diſcretion.

But if an infant be of the age of 14 years, he is as to this purpoſe of the age of diſcretion, to be ſworn as a witneſs; but if under that age, yet if it appear, that he hath a competent diſcretion, he may be ſworn. 2 *H. H.* 278.

And in many caſes an infant of tender years may be examined without oath, where the exigence of the caſe requires it; which poſſibly, being fortified with concurrent evidences, may be of ſome weight; eſpecially in caſes of rape, buggery, and ſuch crimes as are practiſed upon children. 2 *H. H.* 279, 284. *Str.* 700.

6. It ſeems an unconteſted rule in all caſes, that it is a good exception againſt a witneſs, that he is either to be a gainer or loſer by the event of the cauſe, whether ſuch advantage be direct and immediate, or conſequential only. 2 *Haw.* 433. Witneſs intereſted.

Thus in an information upon the ſtatute of uſury, the party to the uſurious contract ſhall not be admitted to be a witneſs againſt the uſurer, for in effect he ſhould be witneſs in his own cauſe, and ſhould avoid his own bonds and aſſurances, and diſcharge himſelf of the money borrowed. 1 *Inſt.* 6.

Thus alſo an attorney ought not to be examined againſt his client, becauſe he is obliged to keep his ſecrets: but of his own knowledge before retainer, he may be examined as a witneſs, if ſerved with a ſubpœna. *Wood* 1028.

But upon an indictment for battery, or the like, the party grieved may be a witneſs againſt the defendant, becauſe the proſecution is at the ſuit of the king. *Wood* 1096.

Alſo it ſeems agreed, that it is no good exception againſt a witneſs, that he has a maintenance from the king; for every one may maintain his own witneſſes. 2 *Haw.* 434.

Thus alſo, one commoner may be a witneſs for another claiming common, becauſe in effect it charges himſelf; that is to ſay,

he admits another to have common with himſelf. But if the preſcription be, that all the inhabitants of ſuch a place ought to have common there, one of the inhabitants cannot be a witneſs, to prove that another of the ſaid inhabitants ought to have common there, becauſe in effect he would ſwear to give himſelf right of common there. L. *Raym.* 731.

In evidence to a jury at bar, a ſpecial iſſue by rule of court was directed to try the cuſtom of lady *Percie*'s manor of *Weſtwood* in *Cumberland*, whether fines on the tenants on their lord's death, be due to the heirs or ſucceſſors of the lord, during his minority; the defendant excepted to the ſteward, becauſe he had a fee on admiſſion, but it was not allowed, and he was ſworn. 3 *Keb.* 90.

A witneſs's laying a wager in the cauſe, is no hindrance to his being a witneſs; for the other has an intereſt in his evidence, which he cannot deprive him of. *Fareſt.* 31. *Str.* 652.

If a perſon *apprehends* himſelf to be intereſted, though in ſtrictneſs of law he is not, yet he ought not to be ſworn: as where the witneſs for the plaintiff apprehended that if the plaintiff ſhould recover, he would remit a claim of ſome money which he (the plaintiff) had upon this witneſs; but if he ſhould not recover, he would not remit it; although in ſtrictneſs of law, his recovering or not recovering in that caſe would not alter the claim: or as in caſe where the witneſs owned himſelf to be under an honorary, though not under a binding engagement, to pay the coſts. *Str.* 129.

Huſband and wife.

7. It ſeems agreed, that the huſband and wife being as one and the ſame perſon in affection and intereſt, can no more give evidence for one another, in any caſe whatſoever, than for themſelves; and that regularly the one ſhall not be admitted to give evidence *againſt* the other, nor the examination of the one be made uſe of againſt the other, by reaſon of the implacable diſſenſion which might be cauſed by it, and the great danger of perjury from taking the oaths of perſons under ſo great a biaſs, and the extreme hardſhip of the caſe. Yet ſome exceptions have been allowed in caſes of evident neceſſity; as in the lord *Audley*'s caſe, who held his wife, while his ſervant by his command raviſhed her; or where a man is indicted for a forcible marriage on the ſtatute of the 3 *H.* 7. or where either a huſband or wife have cauſe to demand ſureties of the peace againſt the other. 2 *Haw.* 431, 432.

Judge or juror being a witneſs.

8. It ſeems agreed, that it is no exception againſt a perſon's giving evidence either for or againſt a priſoner, that he is one of the judges or jurors who are to try him. 2 *Haw.* 432.

Witneſs being an accomplice.

9. It has been long ſettled, that it is no exception againſt a witneſs, that he hath confeſſed himſelf guilty of the ſame crime, if he hath not been indicted for it; for if no accomplices were to be admitted as witneſſes, it would be generally impoſſible to find evidence to convict the greateſt offenders. 2 *Haw.* 432.

Alſo it hath been often ruled, that accomplices who are indicted, are good witneſſes for the king, until they be convicted. 2 *Haw.* 432.

Alſo

Alſo it hath been often adjudged, that ſuch of the defendants in an information, againſt whom no evidence is given, may be witneſſes for the others. 2 *Haw.* 432.

It hath been alſo adjudged, that where three perſons are ſued in three ſeveral actions on the ſtatute for a ſuppoſed perjury in their evidence concerning the ſame thing, they may be good witneſſes in ſuch actions for one another. 2 *Haw.* 432.

Witneſs an alien or bondman.

10. It ſeems agreed, that it is no good exception againſt a witneſs, that he is an alien, or villein, or bondman. 2 *Haw.* 434.

Witneſs over ſea, or dead.

11. If a man be over ſea, or dead, the party ſhall be admitted to prove his hand by witneſſes, or comparing it with other writing. *Tr. per p.* 301.

The ſayings of a dead man are not to be given in evidence to prove a particular fact; they are only to be admitted in proof of general uſages and cuſtoms; but as for a particular fact, lying in the knowledge of a particular perſon, by his death the evidence is loſt. *St. Tr. V.* 5. 456.

And it hath been agreed, that the evidence given by a witneſs at one trial, cannot in the ordinary courſe of juſtice be made uſe of againſt a defendant, on the death of ſuch witneſs at another trial. 2 *Haw.* 430.

Hearſay.

12. It ſeems agreed, that what a *ſtranger* has been heard to ſay, is in ſtrictneſs no manner of evidence, either for or againſt a priſoner, not only becauſe it is not upon oath, but alſo becauſe the other ſide hath no opportunity of a croſs examination; and therefore it ſeems a ſettled rule, that it ſhall never be made uſe of, but only by way of inducement or illuſtration of what is properly evidence: yet it ſeems, that what the *priſoner* has been heard to ſay at another time, may be given in evidence, either to invalidate or confirm the teſtimony which he gives in court. 2 *Haw.* 431.

IV. Of proceſs to cauſe witneſſes to appear.

Two ways of cauſing witneſſes to appear.

1. The compulſory means to bring in witneſſes, are of two kinds. 1. By proceſs of *ſubpœna* (A) iſſued in the king's name, by the juſtices, or others, where the trial is to be. 2. Which is the more ordinary and more effectual means (in criminal caſes), the juſtices that take the examination of the perſon accuſed, and the information of the witneſſes, may at that time, or at any time after, and before the trial, bind over (B) the witneſſes to appear at the ſeſſions, and in caſe of their refuſal either to come, or to be bound over, may commit them for their contempt in ſuch refuſal. 2 *H. H.* 282.

Charges of witneſſes.

2. But that which is a great defect in this part of judicial adminiſtration, is, that there is no power to allow witneſſes their charges in criminal caſes; whereby many times poor perſons grow weary of attendance, or bear their own charges therein, to their great hindrance and loſs. 2 *H. H.* 282.

That is to ſay, unleſs it be in the caſe of grand or petit larceny, or other felony; for in ſuch caſes, by the ſtatute of the

25 *G.* 2. *c.* 36. reaſonable charges ſhall be allowed by the court to the proſecutor upon conviction, to be paid by the treaſurer out of the county rates.

And by the ſtatute of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on recognizance in any court to give evidence againſt another accuſed of grand or petit larceny or other felony, the court may, at the prayer, and on the oath of ſuch perſon, and on conſideration of his circumſtances, order the treaſurer to pay him ſuch ſum as they ſhall think reaſonable for his time, trouble, and expence; which order the proper officer ſhall make out for the fee of 6 *d.* except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

Where a witneſs is a priſoner in execution.

3. Where a witneſs is a priſoner in execution for debt, he muſt be brought up by *habeas corpus ad teſtificandum*, to give his evidence. *St. Tr. V.* 2. 580. *V.* 4. 37.

Witneſs how far privileged againſt an arreſt.

4. One was ſubpœnaed *ad teſtificandum*, and prayed a privilege from being arreſted, which was granted; and by the court, it will ſuperſede an arreſt upon mean proceſs, but not upon an execution; yet the ſheriff in that caſe may be committed for his contempt. *Nevil*'s caſe, 15 *C.* 2. *Tr. per p.* 310.

Penalty of a witneſs not appearing.

5. By the 5 *El. c.* 9. *ſ.* 12. If any perſon, upon whom any proceſs out of any of the courts of record within this realm ſhall be ſerved, to teſtify or depoſe concerning any matter depending therein, and having tendred unto him, according to his countenance or calling, ſuch reaſonable ſum for his coſts and charges, as (having regard to the diſtance of the places) is neceſſary to be allowed in that behalf, do not appear according to the tenor of the proceſs, having not a lawful and reaſonable impediment; he ſhall forfeit 10 *l.* and ſhall yield ſuch further recompence to the party grieved, as to the judge of the court, out of which the proceſs was awarded, ſhall ſeem meet, according to the loſs that the party which procured the proceſs ſhall ſuſtain; to be recovered by the party grieved, in any court of record.

In the caſe of *Wyat* and *Winkford*, 2 *G.* 2. A motion was made for an attachment againſt a perſon, for not attending at the aſſizes to give his evidence, being ſubpœnaed, and having received one guinea for his charges, and being promiſed to have one guinea a day while there, and his charges paid. And a rule was made to ſhew cauſe. And afterwards cauſe was ſhewed, that an attachment ought not to go, but the party injured had his action upon the ſtatute of *Eliz.* but the court thought, that it was a good foundation for an attachment, the diſobedience to the ſubpœna being a contempt to the court; and tho' an action might be brought on the ſtatute, yet that was a more dilatory method, and more difficult to proceed in, which encouraged witneſſes not attending frequently upon trials, at which they were ſubpœnaed to appear and give evidence. And therefore the rule was made abſolute. L. *Raym.* 1529.

E. 14 *G.* 2. *Chapman* and *Pointon.* A witneſs was ſerved with a ſubpœna at *Cheſter*, to attend the ſittings at *Guildhall*, and two guineas were tendred by the perſon who ſerved it, and being objected to as too little, he declared he would give no more. The witneſs

witneſs not coming up, an attachment was moved for; but on ſhewing cauſe was diſcharged: the court ſaying it was too little, and that the witneſs is not obliged to truſt to the court's allowing him more when he comes to the book; for perhaps the party may not call him, and then it may be difficult for him to get home again: that this way of puniſhing as for a contempt was new, and practiſed only in this court; the common pleas not doing it to this day, but leaving the party to his remedy on the 5 *El. c.* 9. and therefore they would not enter into any nice calculations of the expence, but confined their inquiry to the queſtion, whether the non attendance was through obſtinacy or not. *Str.* 1150.

And, by the court, in the caſe of *Hammond* and *Stewart*, *H.* 8 *G.* the witneſſes ought to have a reaſonable time, to put their affairs in order, that their attendance upon the court may be as little prejudice to themſelves as poſſible. *Str.* 510.

In criminal caſes, if a witneſs hath been bound over, and do not appear; he ſhall forfeit his recognizance.

V. Of the manner of giving evidence.

Which party ſhall begin the evidence.

1. He who affirms the matter in iſſue, whether plaintiff or defendant, ought to begin to give evidence. *Litt.* 36. *Goldſ.* 23.

Evidence to be upon oath.

2. The evidence both for and againſt a priſoner, ought to be upon oath.

And if a peer is produced as a witneſs, he ought to be ſworn. 3 *Keb.* 61.

Lord *Preſton* was committed by the court of quarter ſeſſions, for refuſing to be ſworn to give evidence to the grand jury, on an indictment of high treaſon; and on his being brought by *habeas corpus* into the king's bench, *Holt* Ch. J. ſaid, it was a great contempt, and that had he been there, he would have fined him, and committed him till he paid the fine; but being otherwiſe, he was bailed. 1 *Salk.* 278.

But a quaker's affirmation in all caſes not being criminal, ſhall be allowed as evidence, without an oath; but in criminal caſes, his affirmation ſhall not be allowed. 7 & 8 *W. c.* 34.

Witneſſes may be examined apart.

3. The court may indulge a priſoner in examining the witneſſes apart, but he cannot demand it of right. *St. Tr. V.* 4, 9.

Evidence to be given in the priſoner's preſence.

4. In caſes of life, no evidence is to be given againſt a priſoner, but in his preſence. 2 *Haw.* 428.

Witneſſes cannot teſtify a negative.

5. Witneſſes cannot teſtify a negative, but only an affirmative. *Wood* 1026.

A man ſhall not diſprove his own witneſſes.

6. A priſoner may not call witneſſes to diſprove what his own witneſſes have ſworn. *St. Tr. V.* 2. 764, 792.

Whether a witneſs may read his evidence.

7. A witneſs ſhall not be permitted to read his evidence, but he may look upon his notes to refreſh his memory. *St. Tr. V.* 4, 45.

When he may be croſs examined.

8. A witneſs ſhall not be croſs examined, till he has gone thro' the evidence for the party on whoſe ſide he was produced. *St. Tr. V.* 2. 792.

Variance.

9. It hath been admitted, that in order to ſhew a variance in the evidence, a depoſition taken by a witneſs before a juſtice of the peace, may at the priſoner's deſire be read at the trial, in order to take off the credit of the witneſs, by ſhewing a variance between ſuch depoſitions, and the evidence given in court. And for the ſame reaſon it ſeems agreed, that where a witneſs at one trial varies from his own evidence at another, in relation to the ſame matter, ſuch variance may alſo be given in evidence to invalidate his teſtimony at the ſecond trial. 2 *Haw.* 430.

Which party ſhall conclude.

10. The counſel of that party which doth begin to maintain the iſſue, ought to conclude. *Tri. p. pais* 220.

A. Subpœna to give evidence.

GEORGE *the ſecond, by the grace of god, of* Great Britain, France *and* Ireland, *king, defender of the faith, and ſo forth. To* A. B. C. D. *and* E. F. *greeting: We command you, and every of you, that all buſineſs being laid aſide, and all excuſes whatſoever ceaſing, yo do in your proper perſons appear before our juſtices aſſigned to keep the peace in our county of* ——— *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at the general quarter ſeſſions of the peace, to be holden at* ——— *in and for the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of ten in the forenoon of the ſame day, to teſtify the truth, and give evidence on behalf of the inhabitants of the pariſh of* ——— *in the ſaid county, againſt* A. O. *in a caſe of baſtardy. And this you are in no wiſe to omit, nor any of you to omit, on pain of one hundred pounds. Witneſs Sir* James Lowther, *baronet, the* ——— *day of* ——— *in the* ——— *year of our reign.* C.

Note; There may be four witneſſes put in one *ſubpœna.*

A ſubpœna ticket.

To Mr. A. W.

BY *virtue of his majeſty's writ of ſubpœna to you directed, and herewith ſhewn to you, you are perſonally to be before his majeſty's juſtices of the peace for the county of* ——— *at the general quarter ſeſſions of the peace to be holden for the ſaid county, at* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *next, to teſtify the truth, and give evidence on behalf of the inhabitants of the pariſh of* ——— *in the ſaid county, againſt* A. O. *in a caſe of baſtardy. And this you are not to omit, upon pain of one hundred pounds. Dated this* ——— *day of* ——— 1753.

By the court.

C.

B. Condition

B. Condition of a recognizance to appear and give evidence.

THE *condition of this recognizance is ſuch, that if the above-bound* A. W. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, and then and there give ſuch evidence as he knoweth, upon a bill of indictment to be exhibited by* A. I. *of* ——— *yeoman, to the grand jury, againſt* A. O. *late of* ——— *in the ſaid county, yeoman, for the feloniouſly taking and carrying away* ——— *the property of* ——— *and in caſe the ſaid bill be found a true bill, then if the ſaid* A. W. *ſhall then and there give evidence to the jurors that ſhall paſs on the trial of the ſaid* A. O. *upon the ſaid bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, otherwiſe of force.*

Examination.

IF a felony is committed, and one is brought before a juſtice upon ſuſpicion thereof, and the juſtice finds upon examination that the priſoner is not guilty; yet the juſtice ſhall not diſcharge him, but he muſt either be bailed or committed: for it is not fit that a man once arreſted and charged with felony, or ſuſpicion thereof, ſhould be delivered upon any man's diſcretion, without farther trial. *Dalt. c.* 164.

In order to which bail or commitment, the examination and information of the parties muſt firſt be taken, according to the following ſtatutes:

Two or more juſtices (1 Q.) *or one of the ſaid juſtices, before they bail a perſon apprehended for felony (if the offence is bailable) ſhall take his examination* (A) *and the information* (B) *of them that bring him, of the fact and circumſtances thereof, and the ſame, or as much thereof as ſhall be material to prove the felony, ſhall put in writing; which examination they ſhall certify (together with the bailment) at the next general gaol delivery, to be holden within the limits of their commiſſion.* 1 & 2 P. & M. c. 13. ſ. 4.

And they ſhall have power to bind by recognizance (C) *all ſuch as do declare any thing material to prove the offence, to appear at the next general gaol delivery, to be holden within the county where the trial ſhall be, then and there to give evidence againſt the party; and ſhall certify ſuch recognizance in like manner.* ſ. 5.

And if they offend in any thing herein, they ſhall be fined by the juſtices of gaol delivery. id.

In like manner, where the perſon is not bailed, but committed to ward, the juſtice or juſtices who commit him, ſhall before ſuch commitment, take the like examination and information, and ſhall put the ſame in writing within two days after the ſaid examination, and

ſhall in like manner bind over the witneſſes; and certify the whole as above. 2 & 3 P. & M. c. 10.

Shall take his examination] And in order thereunto, if by ſome reaſonable occaſion, the juſtice cannot at the return of the warrant take the examination, he may by word of mouth command the conſtable or any other perſon, to detain in cuſtody the priſoner till the next day, and then to bring him before the juſtice, for farther examination. And this detainer is juſtifiable by the conſtable or any other perſon, without ſhewing the particular cauſe for which he was to be examined, or any warrant in writing. 1 *H. H.* 585.

But the time of the detainer muſt be no longer than is neceſſary for ſuch purpoſe; for which it is ſaid, that the ſpace of three days is a reaſonable time. 2 *Haw.* 119.

But the examination of the perſon accuſed, ought not to be upon oath. 1 *H. H.* 585.

But if upon his examination he ſhall confeſs the matter, it ſhall not be amiſs that he ſubſcribe his name, or mark to it. *Dalt. c.* 164.

Which examination being voluntary, and ſworn by the juſtice or his clerk to be truly taken, may be given in evidence againſt the party confeſſing, but not againſt others. 1 *H. H.* 585. 2 *Haw.* 429.

Information of them that bring him] Or of other witneſſes; whom the juſtice may bring before him by his warrant (D) for that purpoſe. 1 *H. H.* 586. *Dalt. c.* 164.

And this information muſt be upon oath. *Dalt. c.* 164. 1 *H. H.* 586.

And therefore if a quaker is a witneſs, his affirmation muſt not be taken in this caſe; for by the 7 & 8 *W. c.* 34. *f.* 36. it is provided, that no quaker ſhall be examined for or againſt any perſon in any criminal cauſe, unleſs it be upon oath.

And the ſaid information being upon the trial ſworn to be truly taken, by the juſtice or his clerk, may be given in evidence againſt the priſoner, if the witneſſes be dead and not able to travel. 1 *H. H.* 586.

Or as much thereof as ſhall be material to prove the felony] Yet it ſeemeth alſo juſt and right, that the juſtices who take information againſt a felon, or perſon ſuſpected of felony, ſhould take and certify as well ſuch information, proof, and evidence, as goeth to the acquittal or clearing of the priſoner, as ſuch as maketh againſt the priſoner: for ſuch information, evidence, or proof ſo taken, is only to inform the king and his juſtices of the truth of the matter. *Dalt. c.* 165.

Shall certify at the next gaol delivery] And yet for petty larcenies, and ſmall felonies, the offenders may be tried at the quarter ſeſſions, and the examinations and informations may be certified thither. *Dalt. c.* 164.

To be holden within the limits of their commiſſion] And yet examinations taken by juſtices of the peace in one county, may be by

by them certified in another county, and there read, and given in evidence againſt the priſoner. *Dalt. c.* 164.

To bind by recognizance] And upon refuſal, may commit the perſon refuſing. 1 *H. H.* 586.

And the parties grieved ought to be bound, not only to give evidence, but alſo to prefer a bill of indictment againſt the priſoner. *Dalt. c.* 164.

A. Examination of a felon.

Weſtmorland. THE *examination of* A. O. *of* ——— *yeoman, taken before me* Lancelot Pattenſon, *clerk, one of his majeſty's juſtices of the peace for the ſaid county* [or, in the caſe of bail,—*taken before us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, and one of us of the* Quorum] *the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *The ſaid* A. O. *being charged before me* [or, *us*] *by* A. I. *of* ——— *yeoman, with the felonious ſtealing out of the houſe of the ſaid* A. I. *at* ——— *on the* ——— *day of* ——— *the following goods, to wit,* ——— *to the value of* ——— *he the ſaid* A. O. *upon his examination now taken before me* [or *us*] *confeſſeth that* ——— [or, *denieth that* ———] *&c.*

B. Information of a witneſs.

Weſtmorland. THE *information of* A. I. *of* ——— *yeoman, taken upon oath before me* [as before]

C. Recognizance to give evidence.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. I. *of* ——— *in the ſaid county, yeoman, did come before me* Lancelot Pattenſon, *clerk, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and did acknowledge himſelf to owe to our ſaid lord the king ten pounds of lawful money of* Great Britain, *under condition, that if he ſhall perſonally appear before the juſtices of our ſaid lord the king, at the next general quarter ſeſſions of the peace* [or, *gaol delivery*] *to be holden in and for the ſaid county, then and there to give evidence in behalf of our ſaid lord the king, againſt* A. O. *late of* ——— *who being attached, and ſuſpected of felony, is now committed to the gaol of our ſaid lord the king in the ſaid county, that then this recognizance to be void, otherwiſe of force.*

Or thus, to prefer a bill of indictment, and give evidence.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. I. *of* ——— *in the ſaid county, yeoman, perſonally*

came

came before me Lancelot Pattenſon, *clerk, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged himſelf to owe to our ſaid lord the king the ſum of—— of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands, and tenements, to the uſe of our ſaid lord the king, his heirs, and ſucceſſors, if he the ſaid* A. I. *ſhall fail in the condition indorſed.*

J. P.

The condition of the within written recognizance is ſuch, that whereas one A. O. *late of ——— was this preſent day brought before the juſtice within mentioned by the within bounden* A. I. *and was by him charged with the felonious taking and carrying away ——— of the goods of him the ſaid* A. I. *and thereupon was committed by the ſaid juſtice to the common gaol in and for the ſaid county: If therefore he the ſaid* A. I. *ſhall and do at the next general quarter ſeſſions of the peace* [or, *gaol delivery*] *to be holden in and for the ſaid county, prefer, or cauſe to be preferred, one bill of indictment of the ſaid felony againſt the ſaid* A. O. *and ſhall then alſo give evidence there concerning the ſame, as well to the jurors that ſhall then inquire of the ſaid felony, as alſo to them that ſhall paſs upon the trial of the ſaid* A. O. *that then the ſaid recognizance to be void, or elſe to ſtand in full force for the king.*

D. Warrant for a witneſs.

Weſtmorland { To the conſtable of ———

WHEREAS *oath hath been made before me ——— one of his majeſty's juſtices of the peace in and for the ſaid county, by* A. I. *of ——— yeoman, that he the ſaid* A. I. *was lately robbed at ——— and that he hath good cauſe to believe that* A. W. *of ——— is a material witneſs to prove by whom the ſaid robbery was committed: Theſe are therefore to require you to cauſe the ſaid* A. I. *forthwith to come before me, to give ſuch information and evidence as he knoweth concerning the ſaid offence, that ſuch further proceeding may be had therein, as to the law doth appertain. Given under my hand and ſeal at ——— in the ſaid county, the ——— day of ———*

Exciſe and Cuſtoms.

AS the cuſtoms and exciſe, ſo far as juſtices of the peace, conſtables and other peace officers, are concerned therein, are in ſome meaſure connected and interwoven with each other; it is thought proper here to repreſent them together, that the reader may at once have a full and diſtinct comprehenſion of the whole.

I. Of the cuſtoms in general.
II. Of the exciſe in general.
III. Of the ſeveral goods in particular, under the management of the commiſſioners of the cuſtoms and exciſe.

I. Of the cuſtoms in general.

Note; There are two books of rates for aſcertaining the values of goods on importation, according to which the cuſtoms ſhall be paid; the one, ſigned by Sir *Harbottle Grimſton*, baronet, ſpeaker of the houſe of commons, referred to, eſtabliſhed, and confirmed, by the act of tonnage and poundage 12 *C.* 2. *c.* 4. The other, ſigned by *Spencer Compton*, eſquire, ſpeaker of the houſe of commons, being an additional book of rates of goods imported, not particularly ſpecified in the former book of rates: The latter of which, as being part of the act it ſelf, is inſerted in the ſtatutes at large, 11 *G.* *c.* 7. but the former, altho' it is as neceſſary to be known, yet being no part of the act, is not inſerted therein; but may be found in *Cay*'s abridgment.

Appointing and ſwearing commiſſioners.

1. When any commiſſion ſhall be iſſued for conſtituting commiſſioners of the cuſtoms, two of them firſt named in the commiſſion ſhall be ſworn before the chancellor, or chief baron of the exchequer, or maſter of the rolls, *for the true and faithful execution, to the beſt of their knowledge and power, of the truſt committed to their charge and inſpection, and that they will not take or receive any reward or gratuity, directly or indirectly, other than their ſalaries, and what ſhall be allowed them from the crown, or the regular fees eſtabliſhed by law, for any ſervice to be done, in the execution of their employment in the cuſtoms, on any account whatſoever.* 6 W. c. 1. ſ. 5.

And every other of the commiſſioners and patent officers, and every of their deputies, clerks, or ſervants, and all other officers who ſhall have any employment in or about the cuſtoms, ſhall at their admiſſion, if it is within the ports of *London*, take the ſaid oath before two commiſſioners; and elſewhere, before two juſtices of the peace in the county, town, or place, where his employment

ment shall be: And every person not taking such oath, shall forfeit his office. *id.*

And the persons hereby respectively authorized to administer the oath, shall certify the taking thereof, to the next sessions to be held for the county or place where the oath was administred, to be kept amongst the records. *id. s.* 6.

In what cases they only can make seizures.

2. By the 13 & 14 *C.* 2. *c.* 11. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or non-payment of customs, but by officers of the customs. *s.* 15.

But by the 8 *G. c.* 18. Spirituous liquors, *British* or foreign, and all foreign excisable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or by such persons as shall be deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal; but by no other person. *s.* 24.

And therefore no others have power, unless where it is specially given, as it is in some cases hereafter following, by statute.

Isle of man, as to customs.

3. No drawback shall be allowed for goods exported to the *Isle of Man*; and none shall be imported from thence, but of the produce thereof. 12 *G. c.* 28. *s.* 21, 22, 23.

Shipping or landing goods without warrant.

4. If any goods shall be laden or taken in from the shoar, into any barge, hoy, wherry, or boat, to be carried aboard any ship outward bound; or laden or taken in out of any ship coming in from foreign parts, without a warrant and presence of an officer of the customs; such barge, hoy, wherry, or boat shall be forfeited; and the wharfinger offending shall forfeit 100 *l.* and the master, purser, boatswain, or other mariner of any ship inward bound, consenting thereunto, shall forfeit the value of the goods so unshipped; half to the king, and half to him that shall sue. 13 & 14 *C.* 2. *c.* 11. *s.* 7.

And if any carman, porter, waterman, or other person, shall assist in the taking up, landing, shipping off, or carrying away, any such goods; such person, being apprehended by the warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next gaol, there to remain till he find surety of the good behaviour for so long time until he be discharged by the lord treasurer, chancellor, under treasurer, or barons of the exchequer; and for a second offence, he may by any justice of the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 5 *l.* for the king's use, or until he shall be discharged by the court of exchequer as aforesaid. *id.*

Power of justices in case of ships, cattle, and carriages forfeited.

5. And here, on occasion of the forfeiture of the boat or vessel, mentioned in the preceding section, it is proper to take notice of a general clause in the statute of 8 *G. c.* 18. which brings the cognizance not only of the said forfeiture, but also of several others hereafter following, under the jurisdiction of the justices of the peace, and consequently enlarges considerably this title relating to the customs; to wit, In regard that the keeping and maintaining the horses seized, from the time of seizure, to the time of condemnation in the court of exchequer, is very chargeable, and the charge

charge of condemning such vessels, boats, and horses, is very great; therefore it is enacted, that all seizures of vessels or boats of 15 tons or under, by virtue of any act relating to the customs, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all seizures of horses, or other cattle, or carriages for carrying such goods, may be heard and determined in such manner as is appointed by the act of 6 *G. c.* 21. except as therein excepted; that is to say, All such seizures may in a summary way be determined by two justices of the peace residing near the place where the seizure is made; who shall summon the party accused, and on appearance or default proceed to hear and give judgment, and issue warrants for sale of such as shall be by them condemned: whose judgment shall not be liable to any appeal or *certiorari*. 8 *G. c.* 18. *s.* 16.

Justices on trial to proceed on the merits.

16. And by the 9 *G.* 2. *c.* 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *s.* 34.

Officer on trial need not prove his commission.

7. And if any question shall arise, whether any person be an officer of the customs, proof shall be admitted, that such person was reputed to be, and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission. 11 *G. c.* 30. *s.* 32.

Proof to lie on the owner.

8. And if any dispute shall arise, whether the customs have been paid; the proof shall lie on the owner, and not on the officer. 12 *G. c.* 28. *s.* 8.

Goods relanded after drawback.

9. If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debenture to be made forth for any such drawback, shall not be really and *bona fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officers of the port; then not only all such certificate goods shall be forfeited, but also the person relanding the same, or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double value of the drawback, together with the vessels, boats, horses, cattle, and carriages, made use of in landing or carrying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at *Westminster*. 8 *An. c.* 13. *s.* 16. But by the clause abovementioned, the boats, cattle, and carriages, may be recovered before the justices of the peace.

Unshipping with intent to land.

10. By the 8 *An. c.* 7. If any goods shall be unshipped, with intention to be landed, without paying customs, or if any prohibited goods shall be imported; then not only the said goods shall be forfeited, but also the persons assisting or concerned therein, or to whose hands they shall come, shall forfeit treble value, together with the vessels, boats, horses, and other cattle, and carriages; half to the king, and half to him that shall seize or sue. *s.* 17.

Power to search.

11. Any person authorized by writ of assistants out of the exchequer, may take a constable or other publick officer near, and in the day time enter any house or place, and in case of resistance

break open doors, chests, and other package, there to seize, and from thence to bring goods prohibited and uncustomed, and secure them in the king's warehouse. 13 & 14 C. 2. c. 11. s. 5.

Goods passing may be stopped and seized.

12. If prohibited or customable goods shall be found by any officer of the customs, in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water side, without the presence of an officer; or if such goods shall, on information of a credible person, be found in any house or place, on search made as by the said statute of 13 & 14 C. 2. c. 11. such officer may stop and put the said goods in the king's warehouse, until the claimer shall make proof before the commissioners, if it be in the port of *London*, that the duties have been paid or secured, or that the same had been bought in a lawful way of trade, and that such person verily believes the duties to have been paid, or that the said goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwise delivered, as aforesaid; in which case, the goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof and deliver the same to the collector, or in his absence to one of the other principal officers of the port, which proof shall forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for seizing the same and prosecution. 6 G. c. 21. s. 39.

Provided such proof be made within ten days; in failure whereof the goods may be seized and prosecuted as by the laws against the importation of prohibited or uncustomed goods. s. 40.

If on such prosecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and the question shall arise whether the duties were paid, or the goods had been compounded for, or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recovers his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. s. 41.

Where the claimer shall make proof, either by oath before a justice of the peace, or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner shall receive any damage by such stop; he may bring his action for his reasonable damages. s. 42.

But the officer, if he pleases, may prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery of his goods with full costs: or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. s. 43.

Goods taken in at sea.

13. If any foreign goods shall be taken in at sea, or put out of any ship, within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful

lawful reason, of which the master shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive); the same shall be forfeited, and every person aiding or concerned therein shall forfeit treble value; and the vessel into which the same shall be taken, shall be forfeited, not exceeding 100 tuns; and the master of the vessel out of which they are taken, shall also forfeit treble value; half to the king, and half to him that shall seize or sue. 9 G. 2. c. 35. s. 23.

Officers may search coasting vessels.

14. Any officer of the customs or excise (producing his warrant or deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within the limits of the port; and if any person shall obstruct him, he shall forfeit 100 *l.* 9 G. 2. c. 35. s. 29.

Persons lurking within five miles of the coast.

15. On oath made before a justice of the peace, that any person is lurking within five miles of the sea coast or any navigable river, and there is reason to suspect that he waits with intent to be aiding in running of goods, the justice may grant his warrant to bring him before him; and if he shall not give a satisfactory account of himself and his employment, or otherwise make it appear that he is not concerned in any clandestine or unlawful business, he shall be committed to the house of correction, to be whipt and kept to hard labour not exceeding one month: And the commissioners of the customs or excise shall cause to be paid to the informer a reward of 20 *s.* for each offender. 9 G. 2. c. 35. s. 18.

But if such person shall desire time for clearing himself, he shall not be punished by whipping or other correction, but committed to the common gaol till he shall so do, or till he find security not to be guilty of any the said offences. s. 19.

Buying or receiving run goods.

16. If any person shall knowingly receive or buy any run goods; he shall on conviction (after summons) by confession or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 20 *l.* half to the informer, and half to the poor, by distress; for want of distress, to be committed to prison for three months. 8 G. c. 18. s. 10.

Concealing run goods.

17. And by the 11 G. c. 30. If any person shall harbour, keep, or conceal, or suffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay customs; he shall (whether he claim any property in them or not) forfeit the same, and treble value, to be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*, half to the king, and half to him that shall sue. s. 16.

Offering to sale run goods.

18. And if any person shall offer to sale any prohibited goods, or which have been, or are by him pretended to have been run; the same, together with the package shall be forfeited, and be seized by the party to whom they are offered to sale, or by any officer of the customs or excise: Provided that if the seizure is within the bills of mortality, then within 24 hours, if elsewhere, within 48 hours, they be put into the king's warehouse near the place of seizure, and if it be far from any such warehouse, then in some excise office near. 11 G. c. 30. s. 18.

And the person offering them to sale, shall also forfeit treble value. *s.* 19.

And the said goods, if sold, may be seized (with the package) from the buyer, either by the seller or any such officer. *s.* 20.

And the buyer shall also forfeit treble value. But both buyer and seller shall not be prosecuted for the same goods, but whether of them shall first prosecute the other shall be discharged; but if prosecution shall not be commenced in a month, the warehouse-keeper may prosecute. *s.* 21.

Which said forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. *s.* 39.

Porter carrying run goods.

19. All porters, and others, knowingly carrying run or prohibited goods, and who shall be convicted thereof (on appearance or default) on the oath of one witness, or confession, before one justice where the offence shall be committed, or the offender found, shall forfeit treble value, half to the informer, and half to the poor, to be levied by distress by warrant of such justice, and for want of distress to be committed to the house of correction, to be whipt and kept to hard labour not exceeding three months. 9 G. 2. *c.* 35. *s.* 21.

Persons armed or disguised carrying run goods.

20. Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than five in number, or armed, or disguised, or who shall forcibly resist the officers of the customs or excise in seizing run goods, shall be guilty of felony, and transported for seven years. 8 G. *c.* 18. *s.* 6.

But if any offender shall in two months after his offence, and before conviction, discover his accomplices, so as two or more be convicted; he shall have a reward of 40 *l.* if the value of the run goods exceed 50 *l.* and shall be acquitted. *s.* 7.

And any other person discovering any one offender, in three months, so as he be convicted, shall have in like manner 40 *l.* over and above what he may be intitled to on account of the said run goods. *s.* 8.

And by the 9 G. 2. *c.* 35. Persons being two or more in company, who shall be found passing within five miles from the coast, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than six pounds of tea, or spirituous liquors exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30 *l.* value, landed without entry and payment of duties, and shall carry any offensive arms, or wear any disguise, or shall forcibly obstruct, or resist any officer of the customs or excise in seizing or securing any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the said act of 8 G. *c.* 18. altho' no proof shall be made that such goods were run, or had not been entred and paid duty; but the proof of such entry and payment, and how they came by the goods, shall lie on such persons: and every person convicted of any such offence, shall be guilty of felony, and transported for seven years. *s.* 13.

And

And all the goods so found, weapons, horses, cattle, carriages, and their furniture, chests, bags, casks, and other package, shall be forfeited. *s.* 14.

And if any officer or other person shall lose any limb, or be otherwise maimed or dangerously wounded by any offender last mentioned, or in endeavouring to apprehend him, he shall on the conviction of such offender have a reward of 50*l.* over and above any other reward he may be intitled to by this act. *s.* 15.

And if any person be killed in endeavouring to apprehend such offender, his executors or administrators (on certificate under hand and seal of the judge of assize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have 50*l.* over and above any other reward they may be intitled to by this act. *s.* 15.

And if any person shall, in three months after such last mentioned offence committed, discover to the commissioners of the customs or excise, any offender so as he be convicted; he shall have 50*l.* over and above any other reward he may be intitled to by any law. *s.* 16.

And the commissioners of the customs or excise shall cause the rewards to be paid out of the said revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing such certificate of the person being killed: and if any dispute shall arise between the persons intitled to the reward, the same shall be adjusted by the commissioners. *s.* 17.

Apprehending riotous smugglers.

21. And upon information on oath before a justice of the peace, that any persons, to the number of three or more, are or have been assembled, to be aiding in the clandestine running, landing, or carrying away prohibited and uncustomed goods, or to rescue them after seizure, and armed with fire arms or other offensive weapons; he shall grant his warrant to the constables and other peace officers, requiring them to take to their assistance as many as may be thought necessary for apprehending such persons: and he may, if on examination he find cause, commit them to the next county gaol, there to remain without bail or mainprize, until they be discharged by due course of law: and such persons, on conviction of their being assembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for seven years. 9 G. 2. *c.* 35. *s.* 10.

And the apprehender for every person convicted shall have a reward of 50*l.* immediately after conviction and demand made, tendring a certificate under the hand of the judge, certifying the conviction, and that he was taken by the person claiming the reward. *s.* 11.

And if any person shall lose a limb, be maimed, or dangerously wounded, in apprehending or endeavouring to apprehend, or pursuing such offender; he shall on such conviction have a reward of 50*l.* over and above any other reward that he shall be intitled to by this act. *s.* 11.

And if any person shall be killed in taking, or endeavouring to take such offender; his executors or administrators (on certificate

under the hand and seal of the judge of assize of the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50 *l.* over and above any other reward they may be intitled to by this act. *s.* 11.

And if any offender shall in three months after his offence, and before his conviction, discover two or more accomplices, to the commissioners of the customs or excise, so as two be convicted; he shall have 50 *l.* for every person so convicted, and be discharged of his offence. *s.* 12.

The said rewards to be paid as in the last section.

Smugglers indemnified for offences before May 1. 1745.

22. By the 18 *G.* 2. *c.* 28. All persons, who before *May* 1. 1745. have incurred any penalty for running of goods are indemnified. But if any person having been guilty of any such offence, for which he is liable to be transported, shall take the benefit of this act, and afterwards commit any the like offence; he shall be guilty of felony without benefit of clergy.

Outlawed smugglers.

23. And by the 19 *G.* 2. *c.* 34. If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any officer in the seizing such goods, or dangerously wound any officer attempting to go on board any vessel, or shoot at or wound him when on board; he shall be guilty of felony without benefit of clergy. *s.* 1.

And persons charged with any the said offences, before a justice of the peace, by information on oath of one or more credible persons to be subscribed by him or them, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council; who may thereon make his order, commanding the offender to surrender in 40 days after the first publication thereof in the gazette, to the lord chief justice, or any other of the justices of the king's bench, or to some justice of the peace who thereon shall commit him to gaol, to answer the charge against him according to due course of law: Which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be transmitted to the sheriff where the offence was committed; who shall in 14 days cause the same to be proclaimed between ten in the morning and two in the afternoon, in the market places, on the market days, of two market towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some publick place in the said towns: And if such offender shall not surrender pursuant to such order, or escape after surrender,

ſurrender, he ſhall be attainted of felony without benefit of clergy. *ſ.* 2.

And if any perſon after the time appointed for ſurrender, ſhall knowingly harbour ſuch offender; he ſhall, on conviction within one year, be guilty of felony, and tranſported for ſeven years. *ſ.* 3.

And every perſon who ſhall take, or diſcover ſo that he may be taken, any perſon ſo advertiſed and not ſurrendring, and cauſe him to be brought before a judge of the king's bench, or juſtice of the peace for *London* or *Middleſex* (who ſhall commit him to *Newgate*), ſhall receive 500*l.* in one month after execution awarded, from the commiſſioners of the cuſtoms or exciſe reſpectively: And if an offender, againſt whom no ſuch order in council ſhall have been made, ſhall himſelf ſo diſcover or apprehend any other againſt whom an order hath been made; he ſhall be acquitted of all his own offences for which no proſecution is then commenced, and ſhall alſo have his ſhare of the *præmium*: And if any perſon ſhall be maimed or grievouſly wounded in apprehending ſuch offender; he ſhall receive 50*l.* over and above ſuch other reward as he may have as apprehender: And if any perſon ſhall be killed in apprehending, his executors or adminiſtrators ſhall receive 100*l.* *ſ.* 10.

But nothing herein ſhall prevent miniſters of juſtice from taking ſuch offender by the ordinary courſe of law; but if he ſhall be taken before the expiration of the time limited for his ſurrender, no further proceedings ſhall be had upon the order made in council, but the offender ſhall be brought to trial by due courſe of law. *ſ.* 4.

And if any offender, before order for his ſurrender, ſhall diſcover two or more accomplices, ſo as they be convicted; he ſhall receive 50*l.* for each, and be diſcharged of all offences for which no proſecution ſhall be then commenced. *ſ.* 11.

Officers may oppoſe force with force.

24. If any perſons paſſing in a publick and avowed manner, with prohibited or uncuſtomed goods, and armed with piſtols, guns, cutlaſſes, or other offenſive weapons, ſhall moleſt or reſiſt the officers of the cuſtoms or exciſe, endeavouring to ſeize the ſame, by beating, maiming, or wounding them, or any perſon aſſiſting them; they may oppoſe force with force: and if any perſon ſo reſiſting the officers be wounded, maimed, or killed; ſuch officers, or perſons aſſiſting them in their defence, may plead the general iſſue, and give this act and the ſpecial matter in evidence; and all juſtices of the peace, and others, before whom they ſhall be brought, ſhall admit them to bail. 9 *G.* 2. *c.* 35. *ſ.* 35.

Dangerouſly hurting an officer, finable.

25. By the 13 & 14 *C.* 2. *c.* 11. Where any officer of the cuſtoms ſhall be by any perſon armed with club or any manner of weapon, forcibly hindred, affronted, abuſed, beaten, or wounded, to the hazard of their lives, either on board any ſhip, or on the land or water in execution of their office; every perſon ſo abuſing any ſuch officer or his deputy, or ſuch as ſhall act in his aid or aſſiſtance, ſhall by the next juſtice or other magiſtrate be committed to priſon to the next quarter ſeſſions; and the ſaid

sessions shall punish him by fine, not exceeding 100 *l.* and the offender to remain in prison, till he be discharged by order of the exchequer both of the fine and of the imprisonment, or discover the person that set him on work. *s.* 6.

By eight or more, transportation.

26. And by the 6 *G.* *c.* 21. If any officer of the customs be forcibly hindred, wounded, or beaten, in the due execution of his office, by any persons armed with any manner of weapon, tumultuously assembled by day or night, to the number of eight or more; the offenders shall be transported for any term not exceeding seven years. *s.* 34, 35.

And if any offender shall in two months after his offence, and before conviction, discover his accomplices so as two be convicted, he shall have 40 *l.* reward for each, and be acquitted. *s.* 36.

And if any other person shall in three months discover any offender so as he be convicted, he shall have 40 *l.* over and above any other reward on account of the run goods. *s.* 37.

The same to be paid by the receiver general, or cashier of the customs, on producing the judge's certificate. *s.* 38.

Opposed on shipboard, transportation.

27. And by the 9 *G.* 2. *c.* 35. more generally it is enacted, that if any officer of the customs or excise, being on board any ship, be forcibly hindred, wounded, or beaten, in execution of his office, either by day or night; the offender shall be transported for seven years. *s.* 28.

Hundred shall answer damages.

28. And by the 19 *G.* 2. *c.* 34. *s.* 6. If any officer or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten or killed, or the goods seized be rescued; the hundred shall answer damages, and also pay 100 *l.* to the executors or administrators of such person killed, so as the sum for beating exceed not 40 *l.* nor for the loss of goods 200 *l.* to be recovered and levied as in cases of robbery by the 8 *G.* 2.

But no person shall recover damages for such beating or loss of goods, unless he give notice in four days to two inhabitants near, and in eight days make oath before a justice, whether he knew any of the persons concerned, and if he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such also as persons robbed by the 8 *G.* 2. are directed to give. *id. s.* 7.

And where the offender shall be convicted in six months, the hundred shall not be liable. *s.* 8.

Also the action against the hundred must be commenced within a year. *s.* 9.

Felonies in relation to the customs may be tried in any county.

29. Offences relating to the customs or excise, made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, loss of dower, or forfeiture of lands. 19 *G.* 2. *c.* 34. *s.* 5.

II. Of the excise in general.

Head office, and commissioners.

1. One principal head office of excise shall be kept in *London*, or within ten miles thereof, to which all other offices in the kingdom shall be subordinate and accountable; which said office shall be managed by such commissioners as the king shall appoint. 12 *C.* 2. *c.* 24. *s.* 46. 5 *W.* *c.* 20. *s.* 16.

Subcommissioners.

2. And all places within the bills of mortality shall be under the immediate care and management of the said head office; and such, and so many subordinate commissioners, and subcommissioners, and other officers shall be appointed by the king in other places, as he shall think fit. 12 *C.* 2. *c.* 24. *s.* 48.

Office when to be kept open.

3. And the excise office in all places where it shall be appointed, shall be kept open from eight in the morning, till two in the afternoon. 23 *G.* 2. *c.* 26. *s.* 12.

Office in market towns.

4. And the commissioners or subcommissioners shall appoint under their hands and seals, such persons as they shall think needful in each market town, to be there upon every market day, in some known and publick place, for receiving entries and duties, and performing all other things touching the revenue of excise: And if such office shall not be so kept in each market town, the commissioners or others neglecting or refusing, shall for every market day forfeit 10 *l.* And such person as shall come to such market town to make his entry or payment, and tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty for such weekly or monthly entries or payments, as should have been made or paid on such market day. 15 *C.* 2. *c.* 11. *s.* 10.

Gagers.

5. The commissioners or subcommissioners in their respective circuits and divisions, shall constitute under their hands and seals, such and so many gagers as they shall find needful. 12 *C.* 2. *c.* 24. *s.* 33.

Officer's oath.

6. No person shall be capable of intermeddling with any office relating to the excise, until he shall before two justices in the county where his employment shall be, or before a baron of the exchequer, take the oaths of allegiance, supremacy (and abjuration), together with this oath following;

You shall swear to execute the office of ——— *truly and faithfully, without favour or affection, and shall from time to time true account make and deliver to such person and persons as his majesty shall appoint to receive the same, and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint in that behalf.* 12 C. 2. c. 24. s. 47.

And the justices shall certify the taking of such oath, to the next quarter sessions, there to be recorded. *s.* 48.

And the officer shall also enter a certificate thereof with the auditor of the excise: And if any such person shall act before he hath taken the said oaths, and entred his certificate with the auditor

auditor aforesaid, he shall forfeit 50*l.* a month. 15 C. 2. *c.* 11. *s.* 27.

Penalties by the excise laws.

7. In the act of the 24 G. 2. *c.* 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this: *All fines, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at* Westminster, *and shall be half to the king, and half to him that shall inform or sue.* s. 33.

By two justices.

2. That is to say, *If it is within the limits of the chief office in* London, *they shall be determined by the commissioners (or any three of them,* 2 G. 2. st. 2. c. 16. s. 4, 5.) *or, in case of appeals, by the commissioners of appeals: in all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in case of neglect or refusal of such justices by the space of* 14 *days next after complaint made, and notice thereof given to the offender; then the subcommissioners may hear and determine the same; And if the party find himself aggrieved by the judgment given by the said subcommissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace, and subcommissioners aforesaid, are required upon any complaint or information exhibited and brought, of any such forfeiture made or offence committed, to summon the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence, and to issue warrants under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in* 14 *days; and for want of sufficient distress, to imprison the party offending till satisfaction be made.* 12 C. 2. c. 24. s. 45.

Residing near] Mr. *Shaw*, who seems to have taken some pains on this article (and after whom Mr. *Barlow* hath copied without owning it) saith hereupon, that where the *next* justices are impowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed, that the justices residing *near* shall do such a thing, those words are not restrictive, but only directory, and any justices, altho' not the *next* justices, may proceed therein. *Shaw Exc.*

But where the act says, that *any two justices residing near* to the place where the forfeiture shall be made, or the offence committed, shall hear and determine the matter, it doth not intend that the justices of a county at large, dwelling near to a town corporate, which hath justices of its own, and an exclusive charter, shall have power to intermeddle with regard to offences committed within such town corporate; but only to vest the jurisdiction in

justices

juſtices of counties, cities, and places, with reſpect to their local juriſdictions within ſuch places. *T.* 14 *G.* 2. *Talbot* and *Hubble. Str.* 1154.

Upon any complaint or information exhibited] By theſe words it is not neceſſary that the information be exhibited *in writing*; but if it is a verbal information, the juſtices ought to make a record thereof, and of the time and place, when and where exhibited, which muſt be expreſſed in the preſent, and not in the time paſt: But to ſave the juſtices that trouble, it is uſual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying ſuch information, leaving therein blanks for the names of the juſtices, and the day and month and year and place when and where laid; and when thoſe blanks are filled up by direction or conſent of the juſtices, then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the proſecution was in the proper county; and therefore tho' it may happen, that for laying the information, the proſecutor may be obliged to attend one juſtice in one town, and another juſtice in another town, it muſt not be mentioned, that the information was laid at both towns, for that would be abſurd; but in ſuch caſes it is uſual to expreſs that the information is laid at the town where the hearing is intended to be. *Shaw Exc.*

Proceed to the examination of the fact] And by the 9 *G.* 2. *c.* 35. it is enacted, that in trials of ſeizures, the juſtices ſhall proceed to the merits of the cauſe, without inquiring into the form or manner of ſeizure. *ſ.* 34.

Give judgment] Altho' it hath been ſaid, that whatever is recorded by the juſtices or their order, ought to be expreſſed in words of the preſent time and tenſe; yet that doth not make it neceſſary, nor is it indeed practicable, that all that is to be ſo entred ſhould actually be entred at the inſtant of time when ſuch judgment is given; for ſuch entring the whole at that time would hinder the diſpatch of buſineſs, and delay the hearing of cauſes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to ſuch ſhort minutes or notes as are then taken by ſuch juſtices, it will be as authentick as if it had been entred at the inſtant of time in which ſuch order was made, or judgment was given. *Shaw Exc.*

And to iſſue warrants under their hands] Although it is here only directed, that the warrant ſhall be under the *hands* of the juſtices; yet ſince it is generally implied in all warrants, that they be both under *hand* and *ſeal*, it is ſafe at leaſt, if not neceſſary that this warrant alſo amongſt the reſt, be both *ſigned* and *ſealed.*

And to cauſe ſale to be made thereof if not redeemed in 14 *days*] But by the 27 *G.* 2. *c.* 20. the juſtices may not order the diſtreſs to be detained more than eight days, nor leſs than four.

For want of sufficient distress] Mr. *Shaw* and Mr. *Barlow* are of opinion, that where there are some goods, but not sufficient for satisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue; which may seem hard sometimes, when the defendant shall perhaps satisfy nearly the whole sum, and moreover be imprisoned as much as if he had paid nothing; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue, but shall either pay the whole, or be imprisoned for the whole: but perhaps the distinction may be this; where there is a limited time of imprisonment, as for instance three months, there the defendant shall not pay part, and then be imprisoned the whole three months, which would be to punish him both ways; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty, and if part of it is paid already, the inlargement may come the sooner, by payment of the residue.

Imprison the party till satisfaction be made] But before any warrant can be made to arrest and imprison the person of the defendant, there must be first a warrant to seize the utensils in custody of such offender, and the offender's goods; and that warrant must be returned: all which must be done, before any warrant can be regularly made, to arrest and imprison the defendant's person. Which method ought to be observed, tho' perhaps it may be well known by, or sufficiently proved before the justices, that all the utensils and all the defendant's goods are carried off; for the law being in all cases very tender of depriving men of their liberty, it is necessary that all possible means should be used to levy the money on such goods, before the person of the defendant be imprisoned. But if a warrant to seize the utensils and the goods, be made and delivered to an officer to be executed; and if such officer, having made diligent search, cannot find any such, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of such warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justification. *Shaw Exc.*

Summoning witnesses.

9. By the 7 & 8 *W.* *c.* 30. The commissioners and justices may summon witnesses, to appear before them at a certain day, time, and place, to be inserted in such summons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance any shall refuse to give evidence, he shall forfeit 10*l.* *s.* 24.

Officer on trial need not produce his commission.

10. If upon trial, any question shall arise, concerning the keeping of any office of excise, or concerning any persons being an officer; proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving

proving or producing the commission. 6 G. c. 21. s. 24. 11 G. c. 30. s. 32.

11. If on trial any dispute shall arise, whether the excise or other inland duties have been paid for any foreign goods seized; the proof shall lie on the owner, and not on the officer. 12 G. c. 28. s. 8. Proof to lie on the owner.

12. One or more justices shall have power to administer an oath to any person skilled in the value of goods, vessels, or carriages, mentioned to have been seized in any information exhibited before the justices, to view the same, and make return of the species, quantity, and value; and after condemnation, the said goods shall be sold where the commissioners shall think proper. 12 G. c. 28. s. 16. Sworn valuers.

13. *The justices, commissioners, or subcommissioners respectively, where they shall see cause, may mitigate, compound, or lessen the forfeiture, penalty, or fine; so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable costs and charges of such officers, or others, as were employed therein, to be to them allowed by the said justices.* 12 C. 2. c. 24. s. 46. Mitigation.

Mitigate] But it is not necessary in the mitigation, to mention or distinguish so much for the offence, and so much for the charges; but after the justices have agreed what sums to allow for the charges, the best way will be to add those two sums together, and make their mitigation to such sum, as both when added together do amount unto: as suppose the justices do intend, that the defendant shall pay 10 *l.* for the offence, and 40 *s.* for the charges, the best way will be to make their mitigation to 12 *l.* without particularly mentioning that 10 *l.* thereof is for the offence, and that the 40 *s.* is for the charges; for in all cases it is wrong to insert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because the mentioning such unnecessary particulars may give a handle for cavils and disputes. *Shaw Exc.*

Costs and charges] Generally, the law doth not allow any costs or charges to be recovered on any penal law; and therefore to intitle the prosecutor to costs, over and above the penalty, express words for that purpose are necessary in an act of parliament. *Shaw Exc.* But by the 27 G. 2. c. 20. the constable out of the money arising from the sale of the distress, may detain his reasonable charges of taking, keeping, and selling the same.

14. There is no appeal directed in the said statute of 12 C. 2. from judgments given by the justices of the peace; for whereas it is enacted, in the said statute, that *if the party find himself aggrieved by the judgment given by the subcommissioners, he may appeal to the next quarter sessions*, these words, not being general, or such as may be applied equally, as well to the judgments given by the justices, as to judgments given by subcommissioners, they must be understood as limitted and restrained to such judgments only as are given by subcommissioners, in whom the parliament (it seems) did not so intirely confide as in the justices, but have made Appeal.

the aforementioned distinction between the judgment of the one and of the other; which must be observed and pursued: And therefore, generally, there lies no appeal to the quarter sessions from the judgment given by the justices, in matters relating to the excise. *Shaw Exc.*

Nevertheless, in some particular instances, such power is given by subsequent statutes; which will be mentioned under the special heads in this title hereafter following.

By the 15 *C.* 2. *c.* 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or subcommissioners, and given security to the commissioners of appeal, or justices of the peace, where the cause is to be finally adjudged, for such forfeiture as was adjudged against him; and if upon appeal the judgment be reversed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal; and the party originally prosecuting shall pay double costs, but if the judgment be affirmed, the party appealing shall pay the like costs to the commissioners. *s.* 19.

And by the same statute, all differences and appeals about the excise, shall be heard in the proper county, and not elsewhere. *s.* 22.

And by the same statute, appeals within *London*, and the limits thereof, shall be within two months after judgment, and notice given or left at the dwelling house of the party; in all other places, in four months, and not otherwise.

Certiorari.

15. It is generally provided by divers statutes, that no *certiorari* shall be allowed to supersede the justices proceedings. 12 *C.* 2. *c.* 24. *s.* 50. 22 & 23 *C.* 2. *c.* 5. *s.* 14. 6 *G.* *c.* 21. *s.* 22.

Treble costs.

16. Persons sued for any thing done on any act relating to the excise, or other duties under the management of the commissioners of excise, may plead the general issue; and have treble costs. 18 *G.* 2. *c.* 26. *s.* 15.

Felonies relating to the excise, where to be tried.

17. Offences relating to the excise made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, or forfeiture of lands. 19 *G.* 2. *c.* 34. *s.* 5.

Alehousekeepers harbouring offenders.

18. Any alehousekeeper harbouring an absconded person, against whom a process of arrest hath issued, for any offence against the laws of excise or of the customs, after six days notice of such absconding in two successive gazettes, and writing fixed on the door of the parish church where he last dwelt, shall forfeit 100 *l.* and have no licence for the future. 9 *G.* 2. *c.* 35. *s.* 30, 31.

Landing foreign excisable liquors before duty paid.

19. No foreign liquors, for which excise ought to be paid, shall be landed, before entry made with the officer or collector of excise, or before the excise shall be paid: and every warrant from any officer of the customs, for landing such foreign liquors, shall be signed by the officer or collector of excise in the port; on pain that the liquors landed otherwise, or the value thereof, shall be forfeited, to be recovered of the importer or proprietor. 22 & 23 *C.* 2. *c.* 5. *s.* 9.

Excisable liquors carried coastwise.

20. No person bringing any excisable liquors (except beer, ale, cyder, perry, and metheglin) into any place by coast cocquet, transire, or certificate, nor any person to whom the same shall be

be consigned, shall land the same, without being entred with the officer of excise where landed; on pain of double value. 15 C. 2. c. 11. s. 18.

21. If any person shall conceal, or suffer to be concealed, any goods liable to the duties of excise and inland duties; he shall (whether he claims any interest in them or not) forfeit the same, and treble value. 11 G. c. 30. s. 16. Concealing exciſable goods.

22. If on request made by any officer of excise, to a constable to go along with him, and to be present at the doing of any thing, at the doing whereof his presence shall be necessary by any statute, he shall neglect or refuse or shall not go along with him, and be present at the doing thereof; he shall forfeit 20 l. 11 G. c. 30. s. 31. Constable to be assisting.

23. If any person shall oppose, molest, hinder, or obstruct any officer of excise, in the due execution of the powers given him by any act relating to the duties of excise; he shall forfeit 10 l. 6 G. c. 21. s. 7. Obstructing officer.

And actions of assault upon any officer of excise, may be tried in any county. 9 G. 2. c. 35. s. 26.

Further penalties for obstructing, wounding, or killing officers, in the case of run goods, have been inserted before, in treating of the customs.

24. If any officer of the excise or customs shall deal in coffee, tea, brandy, or other exciſable liquors; he shall be incapable to hold any office in the revenue, and forfeit 50 l. 12 G. c. 28. s. 7. Officer not to be a dealer.

25. No sworn gager, or other officer, shall take any bribe, for any matter relating to the excise; on pain of 10 l. 15 C. 2. c. 11. s. 16. Officer taking a bribe.

And a further penalty upon such officer is inflicted, in divers instances hereafter mentioned.

And by the 11 G. c. 30. If any person liable to the duties of excise, or any other duties under the management of the commissioners of excise, shall give or offer to any officer of the said duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it; he shall forfeit 500 l. s. 40.

26. No collector, supervisor, gager, or other person concerned in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100 l. half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king. 5 W. c. 20. s. 48. Officer meddling in elections.

III. Of the several goods in particular, under the management of the commissioners of the customs and excise: *viz.*

Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, and vinegar; candles; coaches; coffee, tea, and chocolate; glass; hops; leather; linen cloth and silks; malt; paper; plate; salt; soap; spirituous liquors; starch and hair powder; wire.

I. Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, vinegar.

Duty on ale and beer imported.

1. By the several acts relating to that purpose, there shall be paid by the importer before landing, for every barrel of beer or ale imported, in the whole the sum of 18*s.*

On home ale and beer.

2. By the several acts there shall be paid in the whole, for every barrel of beer or ale above 6*s.* a barrel, brewed by the common brewer, or any other person who shall sell or tap out beer or ale, the sum of 5*s.* and for every barrel of 6*s.* a barrel or under, the sum of 1*s.* 4*d.*

Duty on cyder and perry imported.

3. For every tun of cyder or perry imported shall be paid 17*l.* 10*s.* And if they are imported by foreigners, they shall pay 30*s.* more.

Duty on cyder and perry sold by retail.

4. And by six several acts, for every hogshead of cyder and perry sold by retail, there shall be paid by the retailer, the sum of 6*s.* 8*d.* And by the 12 *An. st.* 1. *c.* 4. 4*s.* more, to be paid by the first buyer or retailer. *s.* 1.

But a person buying for his own private use, and not being a dealer, shall not be charged. 28 *G.* 2. *c.* 2. *s.* 19.

And if they be used for distilling only, they shall not be charged with the said 4*s.* 3 *G.* 2. *c.* 7. *s.* 11.

Note; Every person who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall sell any of the cyder or perry, shall be deemed a retailer. *id. s.* 2.

Duty on mum.

5. For every barrel of mum imported shall be paid the sum of 25*s.* And moreover by the 12 *An. st.* 1. *c.* 2. and 13 *G. c.* 7. for every barrel of mum made or imported, over and above all other duties, shall be paid by the maker of importer, 10*s.*

Duty on metheglin and mead.

6. For every gallon of metheglin or mead, sold by retail or otherwise, shall be paid by the maker 11 $\frac{1}{2}$*d.*

Duty on sweets.

7. For every barrel of liquor made for sale, by infusion, fermentation, or otherwise, from fruit or sugar, mixed or unmixed with other ingredients, commonly called sweets or made wines, shall be paid 12*s.* 10 *G.* 2. *c.* 17. *s.* 2. But this shall not extend to wines made of *British* grapes. *s.* 7.

Duty on verjuice.

8. Verjuice made for sale, shall pay as cyder and perry. 7 & 8 *W. c.* 30. *s.* 28.

9. For

9. For every tun of vinegar imported ſhall be paid 13 *l.* and if imported by ſtrangers 30 *s.* more. And by the 18 *G.* 2. *c.* 9. 8 *l.* more for *French* vinegar, and other vinegar 4 *l.* Duty on vinegar imported.

10. For every barrel (at 34 gallons to the barrel) of vinegar, vinegar beer, or liquors preparing for vinegar, made for ſale, ſhall be paid 11 *s.* 1 *d.* Duty on home vinegar.

Note; This ſhall extend to vinegar made for pickles, but not to vinegar for making white lead. 8 *An.* *c.* 7. *ſ.* 4, 5.

And all ſtale beer, returns of beer or ale, cyder, verjuice, or any other liquors proper to be made into vinegar, which ſhall be found in the poſſeſſion of any common vinegar maker, (except ſuch as are to be drank in his family, and which ſhall be kept ſeparate for that purpoſe) ſhall be deemed vinegar, or liquors preparing for vinegar. 10 & 11 *W.* *c.* 21. *ſ.* 11.

11. By the 15 *C.* 2. *c.* 11. No common brewer, innkeeper, victualler, or other retailer of beer or ale, ſhall without firſt giving notice at the next office of exciſe, or to the commiſſioners, or ſub-commiſſioners, or one of them, erect, alter, or inlarge, any tun, fat, back, cooler, or copper, and make uſe thereof for brewing or making any beer, ale, or worts; on pain of 50 *l.* And every other perſon, in whoſe occupation any houſe, outhouſe, or other place ſhall be, where any ſuch private tun, fat, back, cooler, or copper ſhall be found, ſhall alſo forfeit 50 *l.* And the ſame, together with all beer, ale, or worts therein, ſhall be taken up, ſeized, and forfeited. *ſ.* 1. Notice and entry of veſſels and places for making the ſame.

And by the 8 & 9 *W.* *c.* 19. If any common brewer ſhall, without notice given at the next office of exciſe, ſet up any tun, batch, float, cooler, or copper, or alter and enlarge the ſame, or have any of them private or concealed; he ſhall forfeit 200 *l.* *ſ.* 8.

And the officer of exciſe, in the day time, and in the preſence of a conſtable, where he ſhall have juſt ſuſpicion, that any private back, tun, or other concealed veſſel or receptacle are uſed by any brewer, maker, or retailer of exciſable liquors, on requeſt firſt made, and cauſe declared, may break open the door, or any part of his brewhouſe, warehouſe, or other room in his poſſeſſion, and enter, and break up the ground in ſuch houſe or room, or ground near adjoining in his poſſeſſion, to ſearch for ſuch back, tun, or other veſſel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other conveyance, he may ſearch and follow the ſame, and if it ſhall lead into any ground, houſe, or place in the poſſeſſion of any other perſon, on like requeſt, and with a conſtable, he may enter the ſame, and break open the ground, or any part of the houſe if occaſion ſhall be, to follow ſuch private pipe, in order to find out ſuch concealed back, tun, or veſſel, making good the ground or houſe ſo broken up, or giving reaſonable ſatisfaction to the owner: And if any perſon ſhall oppoſe ſuch officer, he ſhall forfeit 20 *l.* 7 & 8 *W.* *c.* 30. *ſ.* 27.

And if any *vinegar maker* ſhall without giving ſuch notice, uſe any ſtorehouſe, warehouſe, cellar, or other place for making or keeping any vinegar, vinegar beer, or liquors preparing for vinegar; he ſhall forfeit 50 *l.* 10 & 11 *W.* *c.* 21, *ſ.* 14.

In like manner the maker of *ſweets* for ſale ſhall firſt give ſuch notice, of his name and place of abode, and of the rooms and places he intends to uſe for making or keeping of ſweets or made wines; on pain of 20*l.* 10 *G.* 2. *c.* 17. *ſ.* 4. And any perſon who ſhall ſell or uſe any the materials abovementioned, in making of wines, and in whoſe cuſtody above two gallons ſhall be found, ſhall be deemed a maker of ſweets for ſale. 10 & 11 *W.* *c.* 21. *ſ.* 5.

In like manner, perſons buying fruit to make into *cyder* or *perry* for ſale, ſhall make entry of their ſtorehouſes, cellars, and other places, at the exciſe office within the diſtrict; on pain of 50*l.* 28 *G.* 2. *c.* 2. *ſ.* 20.

Private pipes.

12. No common brewer ſhall keep any pipe or ſtop cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing veſſel to another, or into any other place, nor ſhall have any hole in any tun, batch, or float, by which any beer, ale, or worts may be conveyed into or out of the ſame; on pain of 100*l.* 8 & 9 *W.* *c.* 19. *ſ.* 4.

And the exciſe officer in the day time, and in preſence of a conſtable, on requeſt made, and cauſe declared, may break up the ground in any common brewhouſe, or the ground near adjoining, or any wall, partition, or other place, to ſearch for any ſuch private pipe or other conveyance, and on finding may follow the ſame, and break up the ground, houſe, wall, partition, or other place, thro' or into which the ſame ſhall lead, and break up or cut ſuch pipe or other conveyance, and may turn any cock to try whether it can convey as aforeſaid. *ſ.* 5.

And if on ſearch no ſuch pipe or other private conveyance ſhall be found, the officer ſhall make good the ground, wall, or other place ſo broken up, or make ſatisfaction to the owner: And if any perſon ſhall oppoſe ſuch officer, he ſhall forfeit 50*l.* *ſ.* 6.

But any common brewer may uſe any pipes, ſtop cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper into his publick backs or coolers; and out of the ſame into his tuns, batches, or floats; or out of the tun into his caſks. *ſ.* 7.

Private cellar.

13. No common brewer, innkeeper, victualler, or other retailer of beer or ale, ſhall uſe or keep any private ſtorehouſe, cellar, or other place for laying of any beer or ale, or worts, in caſk; on pain of 50*l.* and every other perſon in whoſe occupation any ſuch place ſhall be, ſhall alſo forfeit 50*l.* 15 *C.* 2. *c.* 11. *ſ.* 1. 1 *W.* *ſt.* 1. *c.* 24. *ſ.* 11.

Private perſon ſuffering liquors to be brewed in his houſe.

14. If any perſon inhabiting in a market town, city, or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouſe, having and lawfully uſing any private brewing veſſels for making beer and ale to be conſumed in his own private family, ſhall permit any beer, ale, or worts to be brewed in his houſe, or other place thereunto adjoining, other than for his own family, ſervants, labourers, or to others by way of charity, hoſpitality, or free gift; or ſhall lend out any of his

brewing veſſels, other than which are moveable and unfixt, he ſhall forfeit 50*l.* 22 & 23 *C.* 2. *c.* 5. *ſ.* 10.

15. The gager ſhall at all times, as well by night as by day (and if by night, then in preſence of a conſtable) be permitted upon his requeſt to enter the brewhouſe, and all other houſes and places belonging to or uſed by any perſon brewing of beer, or by any retailer of beer, ale, worts, perry, cyder, or metheglin; and to gage all coppers, fats, and veſſels in the ſame; and to take an account of all ſuch liquors brewed or made therein; and thereof ſhall make return in writing to the commiſſioners or ſubcommiſſioners; which return ſhall be a charge upon ſuch brewers, makers, or retailers. 12 *C.* 2. *c.* 24. *ſ.* 33. Gager to enter and take account.

And if any brewer ſhall bribe the gager to make a falſe return, he ſhall forfeit 10*l.* and the officer taking the bribe ſhall alſo forfeit 10*l.* 15 *C.* 2. *c.* 11. *ſ.* 16.

And if any ſuch common brewer or retailer ſhall refuſe to permit ſuch gager to enter his brewhouſe or other place aforeſaid, or to gage or take account of his veſſels or liquor aforeſaid, he ſhall be forthwith forbidden by the gager to ſell, carry out, or deliver to any of his cuſtomers, any beer, ale, or other the liquors aforeſaid; and if he ſhall after ſuch warning given, ſell, carry, or deliver out the ſame, or any part thereof, not having paid the duty of exciſe, he ſhall, beſides the forfeiture of double value, forfeit alſo the ſum of 10*l.* 12 *C.* 2. *c.* 24. *ſ.* 33.

And by the 7 & 8 *W.* *c.* 30. If any common brewer, innkeeper, or victualler, ſhall on requeſt or demand made by the gager in the day time, or in the night in preſence of a conſtable, refuſe to permit him to come into his houſe, brewhouſe, or other place uſed by him; or being entred, ſhall refuſe him to ſtay in the brewhouſe, whilſt his guile is brewing, and quietly gage and take an account of the ſeveral worts as they are brewed off, and let into his backs and tuns, and to ſee their ſtrong and ſmall drink cleanſed and carried out without mixture, and to take an account of the goods in the meſh tun, or the quantity of malt from which ſuch worts are made; he ſhall forfeit 20*l.* and the proſecutor ſhall not be obliged to prove that the party carried out any part of ſuch guile before he paid the duties. *ſ.* 22.

And by the ſaid act, if any maker of *vinegar*, *cyder*, *metheglin*, *mead*, or *ſweets* for ſale, ſhall conceal any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or ſweets from view of the gager; he ſhall for every barrel of vinegar or liquor prepared for vinegar, or ſweets, forfeit 40*s.* for every hogſhead of cyder 40*s.* and for every gallon of metheglin or mead 5*s.* *ſ.* 16.

And if any maker or retailer of vinegar, or other the liquors laſt mentioned, ſhall on requeſt or demand made by the gager in the day time, or if by night in the preſence of a conſtable, refuſe to permit him to enter his houſe, ſtorehouſe, or other place uſed by him, and to take account of the ſaid liquors; he ſhall forfeit 15*l.* *ſ.* 17.

And by the 4 *G.* *c.* 3. Every dealer in *cyder* or *perry*, and perſon receiving it into his cuſtody, ſhall be chargeable with the du-

ties, unleſs they ſhall make it appear, either that it was made of fruit of their own growth, and not of bought fruit, or that the duty is paid; and if ſuch perſon on requeſt made by any officer of exciſe in the day time, ſhall not permit him to enter his cellars, ſtorehouſes, or other places, and by gaging or otherwiſe to take account of all cyder and perry there found, he ſhall forfeit 20*l.* *ſ.* 11.

Indifferent gagers may be ſworn.

16. As often as there ſhall be occaſion, two able artiſts ſhall be appointed, one of them by the commiſſioners or ſubcommiſſioners, and the other by the brewers of any city or place; who ſhall be ſworn before a juſtice, to take and compute the juſt contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing veſſels of that nature, and to deliver under their hands one copy of the contents to the commiſſioners and ſubcommiſſioners, and another to each reſpective brewer. 15 *C.* 2. *c.* 11. *ſ.* 7.

Brewer to declare how much he intends to make.

17. Every common brewer who ſhall make any guile of beer or ale, ſhall declare to the gager, how much ſtrong beer or ale he intends to make of ſuch guile, and how much ſmall, before any part of the guile is cleanſed or removed out of his tuns; and if ſuch brewer or his ſervants ſhall refuſe to make ſuch declaration, the gager ſhall return the whole as ſtrong, and the brewer ſhall alſo forfeit for every barrel in ſuch guile 20*s.* And if ſuch brewer or his ſervants, after ſuch declaration ſhall make any increaſe of the ſtrong beer or ale, or if the gager ſhall find any beer, ale, or worts of the ſame guile laid off, over and above the quantity ſo declared; he ſhall forfeit for every barrel ſo increaſed, laid off, or found over and above ſuch quantity 5*l.* and the ſervant aſſiſting therein 20*s.* and in default of payment be impriſoned three months: And if on an information againſt the brewer for the ſaid penalties, it appear by his evidence, that the ſtrong beer or ale ſo declared, was increaſed by adding to or mixing with it any beer or ale that was left in the brewhouſe of a former guile, he ſhall nevertheleſs incur the penalties, except it be alſo proved upon oath that the ſtrong beer or ale ſo added to ſuch guile, was added in the ſight and view of the gager. 8 & 9 *W.* *c.* 19. *ſ.* 2.

Mixing drink of a former brewing.

18. And whereas many brewers, having ſtrong beer or ale remaining in the brewhouſe from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the ſame new ſmall beer, or old returned drink, and then add the beer and ale ſo altered to the next guile; if it ſhall appear to the gager that the quality of ſuch ſtrong beer or ale ſo remaining in the brewhouſe of a former guile, and added to a guile of new drink, hath been ſo altered ſince it was brewed, he ſhall return all ſuch beer and ale ſo altered and added to a guile of new drink, as if the ſame were then originally brewed, and had never been charged before. 8 & 9 *W.* *c.* 19. *ſ.* 3.

Removing drink before the whole is brewed off.

19. If any common brewer, innkeeper, or victualler, ſhall cleanſe, or remove out of his brewhouſe, any part of his guile or brewing of beer, ale, or worts, before the whole of ſuch guile is brewed off, and be in his tuns, backs, or coolers, and until the gager ſhall or might have taken an account of the ſame, without

first giving notice to the supervisor or gager, at what time, and how much of such guile or brewing he intends to cleanse or remove, and where he intends to dispose of the same; he shall for every barrel forfeit 40*s*. 7 & 8 *W*. *c*. 30. *s*. 21.

20. Where it shall appear to the gager, that any worts are missing, or not fairly let down into the tun, and the gager cannot find the same, he may charge for so much beer or ale, as such worts so missing would reasonably make. 1 *W*. *st*. 1. *c*. 24. *s*. 6. Gager may charge for worts missing.

21. Gagers may take their gages, and make their returns and charges, upon warm worts in the backs, coolers, or other vessels; and in such case make allowance of one tenth part thereof for wash and waste; which worts shall not be afterwards charged, when made into beer or ale. 1 *W*. *st*. 1. *c*. 24. *s*. 7. Gage may be taken in warm worts.

22. If any common brewer, innkeeper, victualler, or other retailer of beer or ale, shall after an account hath been taken by the gager, convert any small beer or small worts into strong beer or ale, by mingling the same, and shall sell, deliver out, or retail the same, without giving notice to the same gager, of the quantity so mingled and converted; or if any such brewer or retailer shall conceal or convey any beer, ale, or worts not gaged, from the sight of the gager, whereby the king may be defrauded of the duty; he shall forfeit 20*s*. a barrel. 15 C. 2. *c*. 11. *s*. 12. 1 *W*. *sess*. 1. *c*. 24. *s*. 11. Mixing small beer with strong.

23. No common brewer shall sell, deliver, or carry out any beer or ale to any of his customers, either in whole cask or by the gallon, in any city or market town, before notice given to an officer of excise, but between three in the morning and nine in the evening from *Mar*. 25. to *Sep*. 29. and between five in the morning and seven in the evening between *Sep*. 29. and *Mar*. 25. on pain of 20*s*. a barrel. 15 C. 2. *c*. 11. *s*. 11. Time of delivering out.

And by the 10 & 11 *W*. *c*. 21. No *vinegar maker* shall receive into his custody any liquors for making of vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from *Sep*. 29. to *Mar*. 25. yearly, between seven in the morning and five in the evening; and from *Mar*. 25. to *Sep*. 29. between five in the morning and seven in the evening; on pain of 50*l*. *s*. 12.

And on receiving such liquors into his custody, he shall shew the same to the gager before he mix them with any other liquors, rape, or other materials; on pain of 20*l*. *id*. *s*. 13.

24. If any common brewer, or innkeeper, shall on carrying out his drink, or after it is carried out, mix any small beer or small worts, with any strong beer or ale on his dray, or in any victualler's cellar, or other place; he shall forfeit 5*l*. and the gager may taste the drink upon the dray, and also on request may enter the cellar or other room in the possession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the same; and if the innkeeper or victualler shall refuse him to enter into his cellar or other rooms, or to taste the drink in the same, he shall forfeit 5*l*. 7 & 8 *W*. *c*. 30. *s*. 23. Mixing after delivered out.

25. No retailer of beer or ale, shall after the receipt thereof from the common brewer, mix any beer, ale, or worts, of extra- Mixing by the retailer.

ordinary ſtrenth, with any ſmall beer, ale, or worts, in any veſſel containing three gallons or more; on pain to forfeit for every barrel ſo mixt, double the duty of exciſe for ſtrong beer or ale, and ſo proportionably for any greater quantity. 22 & 23 *C.* 2. *c.* 5. *ſ.* 11.

Meaſure and allowance for leakage, within the bills of mortality.

26. And for avoiding incertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) ſhall be 36 gallons of four quarts to the gallon, according to the ſtandard in the exchequer; and the barrel of ale 32 gallons: And all other the liquors aforeſaid, ſhall be reckoned according to the wine gallon. 12 *C.* 2. *c.* 24. *ſ.* 34. 1 *W. ſt.* 1. *c.* 24. *ſ.* 5.

And the common brewer, not ſelling the ſame by retail, for waſte by fillings and leakage, ſhall be allowed on every 23 barrels of beer, whether ſtrong or ſmall, three barrels; and upon every 22 barrels of ale, two barrels. 12 *C.* 2. *c.* 24. *ſ.* 36.

But if any common brewer ſhall make a falſe entry, and be convicted thereof; he ſhall, over and above other penalties, forfeit the ſaid allowance for ſix months then next enſuing. 12 *C.* 2. *c.* 24. *ſ.* 37.

In other places.

27. In all other places, 34 gallons ſhall be reckoned for a barrel of beer or ale; and the allowance for waſte ſhall be two $\frac{1}{2}$ on every 23 barrels. 1 *W. ſt.* 1. *c.* 24. *ſ.* 5.

Notes of the gage and charge to be left.

28. Notes of every *gage*, ſigned by the gagers, containing the inches and tenths of the backs, and wants of the tuns, and quality of the liquors, ſhall be left by them with the common brewers of ale or beer, or ſome ſervant (if demanded) at the time of taking the gages; on pain of 40 *s.* 7 & 8 *W. c.* 30. *ſ.* 46.

And by the ſame act, the gager ſhall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their ſervants, a true copy under his hand, of each reſpective *charge* by him made, containing the quantity and quality of the liquors by him charged in ſuch week; and if he ſhall neglect or refuſe (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) to leave ſuch copy, or ſhall charge ſuch perſon more than ſuch copy contains, he ſhall forfeit 10 *l. ſ.* 25.

Relief in caſe of over charge.

29. The commiſſioners of exciſe or appeals, or juſtices of the peace, on complaint of any over charge returned upon them by the gager, ſhall hear and determine the complaint, and examine witneſſes on oath, and thereupon, or by other due proof, may diſcharge ſuch complainant of ſo much of his charge as ſhall be made out before them. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 13.

Entry and payment of duties.

30. All common brewers of beer and ale, ſhall once in every week; and all inkeepers, alehouſekeepers, victuallers and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making, or retailing the ſame, ſhall once in every month, make entries at the exciſe office, of all ſuch liquors brewed, made, or retailed in that week and month reſpectively. 12 *C.* 2. *c.* 24. *ſ.* 29.

And all ſuch common brewers who do not once a week make due entries, ſhall forfeit 10 *l.* And every ſuch innkeeper who doth not make true entries once a month, ſhall forfeit 5 *l.* And every

every alehouſekeeper, victualler, or other retailer, who doth not once a month make due entries, ſhall forfeit 20 *s.* *id. ſ.* 30.

And every common brewer who ſhall not pay within a week after he made his entry, or ought to have made his entry, ſhall pay double value of the duty; and every innkeeper, alehouſekeeper, victualler, or other retailer who ſhall not pay within a month after he made his entry, or ought to have made his entry, ſhall pay double value of the duty. *id. ſ.* 31.

Provided that no ſuch perſon ſhall be compelled to travel for making the ſaid entries or payment of the ſaid duties, or other cauſe whatſoever touching the ſame, if he live in a market town, out of the ſaid town; if he live out of a market town, then to no other place than to the next market town to his habitation in the ſame county, on the market day. *id. ſ.* 32.

But no common brewer ſhall be proſecuted for any forfeiture for any miſentry or ſhort entry, if he ſhall in one week after the delivery of the copy of the return made by the gager, rectify his entry according to the ſaid return, or otherwiſe diſcharge himſelf. 15 *C.* 2. *c.* 11. *ſ.* 6.

But no brewer ſhall have any benefit of this proviſo, on any information to be brought againſt him for non-entry, falſe entry, or non-payment; if it ſhall appear by the evidence, that he did not *bona fide* ſhew to the gager all the beer, ale, and worts of each reſpective guile, for ſuch time for which ſuch copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which ſuch copy of the return is made or given by the gager. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 10.

Exception of ſelling in fairs.

31. But if any perſon ſhall brew, and ſell by retail, any ſmall quantities of beer or ale in any fair, who is not otherwiſe a common brewer or retailer thereof, and ſhall before ſuch ſelling and retailing, pay the exciſe for the ſame; he ſhall be freed from all penalties relating to ſuch entries, and the like. 12 *C.* 2. *c.* 24. *ſ.* 39.

Permit for removal after duty paid.

32. If any *ſweets*, having paid the duty, ſhall be intended to be removed, the exciſe officer ſhall on requeſt give a certificate under his hand, expreſſing the quantity and quality, and from whom and to whom they are to be ſent; and if any maker ſhall otherwiſe remove them, or vintner receive them, he ſhall forfeit 10 *s.* a gallon, and alſo the liquor and caſks. 6 *G.* *c.* 21. *ſ.* 22.

Compounding.

33. The commiſſioners and ſubcommiſſioners may compound with innkeepers and others for the duties. 12 *C.* 2. *c.* 24. *ſ.* 40.

But no perſon who hath compounded ſhall, during the term of ſuch compoſition, ſuffer any beer or ale to be brewed within his brewhouſe, for any other common brewer, without firſt giving notice to the commiſſioners or ſubcommiſſioners, and forthwith paying down the exciſe thereof; upon pain that as well the brewer who ſhall brew the ſame, as the brewer for whom it ſhall be brewed, ſhall forfeit 5 *l.* for every barrel. 15 *C.* 2. *c.* 11. *ſ.* 14.

Utenſils liable to the penalties and duties.

34. All the brewing veſſels and utenſils for brewing, into whoſe hands ſoever they ſhall come, and by what conveyance or title ſoever they be claimed, ſhall be ſubject to all the debts and duties of exciſe in arrear for any beer or ale made in the ſaid brewhouſe; and ſhall alſo be ſubject to all penalties and forfeitures againſt the laws of exciſe; and it ſhall be lawful to levy debts and penalties, and uſe ſuch proceedings againſt the utenſils therein contained, as it may be lawful to do, in caſe the debtor or offender uſing the ſaid utenſils had been the real owner thereof. 15 *C.* 2. *c.* 11. *ſ.* 13.

Limitation of actions.

35. No information ſhall be brought againſt any common brewer, or alehouſekeeper, vinegar maker, or cyder maker, for any miſentry or offence, but within three months after the offence committed; and notice thereof ſhall be given to him in writing, or left at his dwelling houſe, within a week after laying and entring the information. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 16. 12 & 13 *W. c.* 11. *ſ.* 17.

Delivering materials to diſtillers.

36. If any common brewer, or maker of cyder, making beer, ale, or cyder for ſale, ſhall deliver to any diſtiller or vinegar maker, any waſh, tilts, ale beer, vinegar beer, or cyder, without firſt giving notice to the gager, what quantity he intends to deliver, and when, and to whom; he ſhall forfeit for every barrel 20*s.* 8 & 9 *W. c.* 19. *ſ.* 9.

Exportation.

37. Ale, beer, cyder, or mum, may be exported; paying cuſtom 1*s.* a ton. 1 *W. ſt.* 1. *c.* 22.

And on exportation thereof the exciſe ſhall be repaid. 22 & 23 *C.* 2. *c.* 5. *ſ.* 15. 7 *G. ſt.* 1. *c.* 20. *ſ.* 31.

II. Candles.

Duty on candles imported.

1. For every pound of tallow candles imported, ſhall be paid in the whole, by the ſeveral acts, 2*d.* $\frac{1}{4}$. 2 *W. ſeſſ.* 2. *c.* 4. *ſ.* 37. 8 *An. c.* 9. *ſ.* 1. 9 *An. c.* 6. *ſ.* 11.

For every pound of wax candles imported, 8*d.* 8 *An. c.* 9. *ſ.* 1. 9 *An. c.* 6. *ſ.* 11.

Duty on candles made in Great Britain.

2. For all candles made of wax, or uſually called or ſold for wax candles (notwithſtanding the mixture of any other ingredients) made in *Great Britain*, ſhall be paid 8*d.* a pound:

All other candles 1*d.* a pound. 8 *An. c.* 9. *ſ.* 1. 9 *An. c.* 6. *ſ.* 11.

Ruſh lights excepted.

3. But the ſaid duties ſhall not be charged on ſuch ſmall ruſh lights, as ſhall be made by any perſons to be uſed in their own houſes only, ſo as none of them be ſold or delivered out or made for ſale, and ſo as they be once only dipped in, or once drawn thro' greaſe or kitchen ſtuff, and not thro' any tallow melted or refined. 8 *An. c.* 9. *ſ.* 31.

Oil not to be uſed inſtead of candles.

4. During the continuance of the duties upon candles, no perſon ſhall uſe in the inſide of his houſe, any lamp, wherein any oil or fat (other than oil made of fiſh within *Great Britain*) ſhall be burned for giving light; on pain of 40*s.* 8 *An. c.* 9. *ſ.* 18.

5. No

5. No maker of candles shall erect, set up, alter, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting of wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise: on pain of 50 *l.* 8 *An. c.* 9. *s.* 6. Places of making candles to be entred.

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 8 *An. c.* 9. *s.* 17.

And by the 11 *G. c.* 30. If any maker of candles (except compounders) shall use any melting house, shop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or use any copper or other vessel for melting the same, or any moulds or other utensil for making of candles, without having made entry thereof in writing at the next excise office; he shall forfeit 100 *l.* *s.* 23.

And the officer, between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning, with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up, shall on his request be opened; on pain that every person obstructing or molesting him, shall forfeit 100 *l.* 11 *G. c.* 30. *s.* 24.

And if the officer on his searching any unentred house or place, shall find candles either made or making, or tallow or other materials melting or melted, or cottons or rushes spread, or any copper, mould, or other utensil warm with tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100 *l.* for having used the same not being entred. 11 *G. c.* 30. *s.* 25.

And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name. *id. s.* 26.

6. The officer shall at all times, by day or by night, and if in the night, then in presence of a constable, be permitted on his request, to enter the house, melting house, warehouse, or other place, belonging to, or used by any person who shall be a maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker: and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 *G. c.* 28. *s.* 30.) he shall forfeit 40 *s.* 8 *An. c.* 9. *s.* 10. Officer to enter and take account.

7. And

The maker to keep ſcales and weights.

7. And the maker ſhall keep juſt ſcales and weights, where he makes his candles; and ſhall permit and aſſiſt the officer to make uſe thereof, on pain of 10 *l.* 8 *An. c.* 9. *ſ.* 11.

Notice and time of making.

8. No maker of candles for ſale, ſhall begin to make any courſe or making of candles, without notice thereof firſt given to the officer, unleſs from *Sep.* 29. to *Mar.* 25. yearly, between ſeven in the morning and five in the evening; and from *Mar.* 25. to *Sep.* 29. between five in the morning and ſeven in the evening; on pain of 10 *l.* 10 *An. c.* 26. *ſ.* 107.

Maker to declare the number and ſizes.

9. Every maker of candles for ſale, ſhall before he begins to make or dip any making or courſe of candles, declare to the officer the number of ſticks he deſigns to make, and the ſizes of the candles whereof each ſtick is to conſiſt; and if ſuch making or courſe is intended to be of moulded candles, then he ſhall declare to the officer, before he begins to fill the moulds, how many moulds he intends to fill at ſuch making, and how often he intends at ſuch making to draw the moulds: and if he ſhall neglect or refuſe to make ſuch declaration, or ſhall after ſuch declaration make any increaſe of his number of ſticks, or of the ſizes of his candles in ſuch making or courſe; or, in the caſe of making mould candles, ſhall fill a greater number of moulds, or draw ſuch moulds oftner than ſhall be declared; or if he ſhall, after the weighing of any making of candles by the officer, increaſe the weight of ſuch candles, by redipping, or otherwiſe; he ſhall forfeit 10 *l.* 10 *An. c.* 26. *ſ.* 106.

And by the 11 *G. c.* 30. If any maker of candles for ſale, ſhall begin to make any courſe of candles, not being mould candles, or make preparation for the ſame, without notice in writing to the officer of ſuch his intention, and of the time of the day or night when he intends to begin, and of the number of ſticks of which ſuch making is intended to conſiſt, and of the ſizes and number on each ſtick; he ſhall in default hereof, or if he have at ſuch making more ſticks, or more candles, or larger than mentioned in the notice, forfeit 50 *l.* and if after ſuch notice, he ſhall not begin at the time, or within three hours of it, ſuch notice ſhall be void. *ſ.* 27.

And lighting a fire under a veſſel for melting the materials, or finding in ſuch veſſel, or in any mould, the materials melted or melting, or cottons or ruſhes ſpread or ſpreading, ſhall be deemed to be ſuch a *beginning to work*, as ſhall make him liable to the ſaid forfeiture. *ſ.* 28.

The officer ſhall charge for materials miſſing.

10. The officer ſhall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he ſhall miſs any that he had taken account of at the laſt time he was at the maker's, and ſhall not on demand receive ſatisfaction what is become thereof, the officer may charge ſuch quantity of candles, as the materials ſo miſſing in his judgment would have made, not exceeding 108 *lb.* of candles for every 112 *lb.* of materials miſſing, and ſo proportionably. 8 *An. c.* 9. *ſ.* 12.

And if any ſuch maker ſhall obſtruct the officer, he ſhall forfeit 20 *l.* *ſ.* 13.

11. Candles

11. Candles cracked or spoiled in making, may be defaced by the officer, who shall make allowance for the duty. 8 *An. c.* 9. *s.* 29. Candles spoiled in making.

12. No maker of candles shall (on pain of 20 *l.*) remove any candles, before the officer hath taken account of the same, without giving to the officer, within the bills, 24 hours notice; and elsewhere, two days notice, of his intention to remove the same. 8 *An. c.* 9. *s.* 14. Removing candles before surveyed.

13. The maker shall keep his candles which have not been surveyed, separate from all other candles which have been surveyed, for 24 hours after making, within the bills, and for two days elsewhere; unless they shall have been sooner surveyed by the officer: on pain of 5 *l.* 8 *An. c.* 9. *s.* 15. Candles unsurveyed to be kept separate.

14. If any officer of the excise shall have cause to suspect, that any candles are fraudulently concealed, if it is within the bills, then on oath made by such officer before two commissioners, or if it be elsewhere, then upon oath before any justice of the peace, setting forth the ground of his suspicion, they or he may impower such officer by day or night by special warrant (but if in the night, in presence of a constable) to enter into the places suspected, and seize and carry away as forfeited all such candles, together with the package; and if any person shall obstruct such officer, he shall forfeit 100 *l.* 23 *G.* 2. *c.* 21. *s.* 34. Search for candles concealed.

15. If any maker of candles for sale, shall mingle candles which have not been weighed by the officer, with those which have; or shall fraudulently remove any before weighing; or conceal any candles or materials: he shall forfeit 100 *l.* 11 *G. c.* 30. *s.* 30. Further penalty of removing, mingling, or concealing.

16. Every person who shall make any candles within the bills of mortality shall monthly, and elsewhere once in every six weeks, make a true entry in writing, at the next excise office, of all candles by him made within such time; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the several weeks; on pain for every neglect of entry to forfeit 20 *l.* Which entry shall be upon the oath of the maker or his chief workman, according to the best of their knowledge and belief; the said entries and oaths, within the bills, to be made with and administred by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. 8 *An. c.* 9. *s.* 7. Entry of candles made.

But he shall not be obliged to go further than the next market town, for making such entry. *s.* 8.

17. And the maker shall in four weeks within the bills, and elsewhere in six weeks, after such entry, pay and clear off the duties; on pain of double duty; and no maker after default in payment shall sell, deliver, or carry out any candles, till he hath paid off the duty, on pain of double value. 8 *An. c.* 9. *s.* 9. Duty to be cleared off.

18. And if there shall be found in the possession of any maker of candles for sale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid; he shall be chargeable with the duties, and if he do not pay the same, he shall be liable to double duty, Candles not entred, nor duty paid.

duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours notice in writing to the officer, or at the next excise office, of his intention to buy the same, and of whom. 11 G. c. 30. f. 29.

Candles where to be sold.

19. No person shall expose to sale any candles, unless in his publick shop or warehouse, publick fair or market; on pain of 5 l. 8 An. c. 9. f. 18.

Compounding.

20. The commissioners or such person as they shall appoint, and in default thereof the collector or supervisor, may compound with persons that make candles for their own private houses, for the duties, at 1 s. by the year for every head in the family, to be paid quarterly; and such person shall not be liable to the duties. 8 An. c. 9. f. 20.

But if any person after composition shall sell or deliver out any candles, or shall permit any other person to make candles in his house or outhouse; or shall have more persons of his family than he shall compound for, without giving notice of them in writing at the next excise office, at or before the next quarter day, and paying the like composition for them, he shall forfeit 5 l. and lose the benefit of his composition, and be liable to the duties and survey of the officers; and for every pound of candles so privately sold or delivered out or made, shall forfeit 5 s. f. 21.

And every such compounder, who shall make default in continuing the same, shall in ten days make entry upon oath of all such candles as he shall be possessed of, at the excise office, on pain of forfeiting 20 l. and the candles of which no such entry shall be made; and in six days after such entry, shall pay the duties, on pain of double value of the candles, and his houses and other places shall be liable to the search of the officers. 9 An. c. 6. f. 14.

Candles carried coastwise.

21. Cocquets granted for shipping candles, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited, and seized, together with the package. 23 G. 2. c. 21. f. 29.

Exportation and importation.

22. No candles shall be imported, otherwise than in some package, containing at least 224 lb. of neat candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50 l. 23 G. 2. c. 21. f. 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages, in payment of the forfeiture. 26 G. 2. c. 32. f. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

Candles

Candles for which the duty hath been paid may be exported, and the duty drawn back. 8 *An. c.* 9. *ſ.* 24, 25, 26.

But no drawback ſhall be allowed, on the exportation of any foreign candles imported. 23 *G.* 2. *c.* 21. *ſ.* 36.

And the officers of exciſe or cuſtoms may ſeize any candles, with the package, that ſhall be found in any veſſel, cart, or other carriage, where they ſhall have good reaſon to believe, that the ſame were made in ſome private workhouſe, or clandeſtinely imported without payment of duty; or that the ſame have been exported and relanded after repayment of the duty: and if the party in whoſe poſſeſſion the ſame ſhall be found, ſhall not at the hearing of the information, make it appear that the duty hath been paid or ſecured, he ſhall forfeit 5 *l.* for every 100 *lb.* weight, and alſo the candles and package ſhall be forfeited. *ſ.* 30.

And if any foreign candles ſhall be unſhipped, with intention to be laid on land, before entry and payment of the duties, or ſhall be landed again after ſhipping for exportation upon debenture; the ſame, together with the package, veſſels, boats, horſes, and other carriages, uſed in landing or conveying the ſame, ſhall be forfeited, and may be ſeized by any officers of the cuſtoms or exciſe; and the perſons from whom the ſame ſhall be ſeized ſhall forfeit 5 *l.* for every hundred weight. *ſ.* 31.

And if any perſon ſhall knowingly harbour or conceal any candles unlawfully imported, or relanded after ſhipping for exportation upon debenture; he ſhall, whether he claims any property therein or not, forfeit 50 *l.* for every hundred weight, together with the candles and package. *ſ.* 32.

And where any ſuch candles ſhall be ſeized as forfeited, and no perſon ſhall claim the ſame in 20 days, if it is within the limits of the chief office of exciſe in *London*, the officer who made the ſeizure may cauſe notice ſigned by the ſolicitor of exciſe, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the ſame by the commiſſioners of exciſe; and if it is out of the ſaid limits, then publick notice ſhall be given by proclamation at the next market town on the market day next after the ſaid 20 days, of the day and place where the juſtices will proceed to trial and condemnation thereof. And the judgment thereon, ſhall not be liable to any appeal, or to be removed by *certiorari*. *ſ.* 33.

Power of the juſtices.

23. All the ſaid fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and diſtributed half to the king, and half to him that ſhall inform or ſue. 8 *An. c.* 9. *ſ.* 28. 11 *G. c.* 30. *ſ.* 39. 24 *G.* 2. *c.* 40. *ſ.* 33.

Appeal.

24. And if the party is not ſatisfied with any judgment of the juſtices on the act of 23 *G.* 2. *c.* 21. before mentioned, he may appeal to the next quarter ſeſſions, except in the caſe before mentioned where no perſon ſhall claim the goods ſeized. *ſ.* 37.

Mitigation.

25. And on informations on the ſaid act of 23 *G.* 2. the mitigation ſhall not reduce the penalty to leſs than a fourth part, over above the coſts and charges to be allowed. *ſ.* 38.

26. And

Proof to lie on the owner.

26. And where candles ſhall be ſeized for nonpayment of duties, or non-entry, and it ſhall be diſputed whether ſuch payment or entry was made or not, the proof ſhall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *ſ.* 35.

Utenſils liable to the duties and penalties.

27. All candles, materials, and utenſils for making of candles, in cuſtody of any maker of candles, or perſon in truſt for him, ſhall be chargeable with all duties in arrear, and ſubject to all penalties and forfeitures, in the ſame manner as if the debtor or offender were the lawful owner. 8 *An.* *c.* 9. *ſ.* 19.

III. Coaches.

Duty on coaches.

1. For every coach, berlin, landau, chariot, calaſh, with four wheels, chaiſe marine, chaiſe with four wheels, and caravan, kept by any perſon for his own uſe, or to be let out to hire; ſhall be paid 4 *l.* yearly: and for every calaſh, chaiſe, and chair with two wheels, kept by any perſon for his own uſe, or to be let out to hire; ſhall be paid 40 *s.* yearly. 20 *G.* 2. *c.* 10. *ſ.* 1.

But this ſhall not extend to *licenſed hackney coaches*, within *London* and *Weſtminſter* and the ſuburbs thereof, not employed in carrying perſons more than ten miles from the ſaid cities. *ſ.* 11.

Nor to *coaches kept for ſale:* But no ſuch carriage ſhall, whilſt in poſſeſſion of the coachmaker or other perſon, be employed for his own uſe, or for the uſe of any other perſon (other than ſuch whoſe carriage ſhall be then and there mending), or be let out to hire; on pain of 20 *l.* *ſ.* 12.

Nor to any *publick ſtage coach*, which is conſtantly employed in carrying paſſengers for hire, on certain fixed days in every week, and not let to hire by way of by-jobb, for a day, or any longer time. *ſ.* 7.

Nor to any *poſt chaiſe* kept for hire by the poſtmaſter general, or any deputy poſtmaſter: But ſuch poſt chaiſes ſhall in 30 days after letting out the ſame, be entred by the owners at the next office of exciſe; and ſhall (beſides the king's arms) have ſuch mark of diſtinction fixed thereon, as ſhall be appointed by the commiſſioners; on pain of 20 *l.* *ſ.* 8, 9.

And the commiſſioners ſhall cauſe a mark of diſtinction to be fixed on every ſuch carriage, that ſhall be let out to hire; and if any perſon ſhall let out to hire any ſuch carriage without ſuch figure fixed thereon, or ſhall take off the ſame when fixed; he ſhall forfeit 20 *l.* *ſ.* 10.

Moreover, no perſon ſhall be obliged to pay the ſaid yearly ſum of 4 *l.* for more than five ſuch carriages kept for his own uſe only; but if he keep the ſame for ſupplying any waiting jobb, by the day, week, month, quarter, or any other time, or to be let out to hire, he ſhall pay 4 *l.* for each, tho' exceeding the number of five; and every perſon who ſhall keep ſuch carriage with two wheels, to be let out for hire, ſhall pay 40 *s.* yearly for each, tho' exceeding the number of five. *ſ.* 2.

Entry and payment of the duties.

2. Every perſon who ſhall keep ſuch coach or other carriage, ſhall in 20 days after he ſhall begin to keep the ſame, and within 20 days yearly after the expiration of 12 kalendar months after the

the time of giving such first notice,—give notice in writing, at the chief office of excise in *London* (if within the bills); and elsewhere, shall give notice at the next office of excise,—of his keeping the same, and the number, and whether with four or two wheels, and where he resides; and at the same time pay down the duties: on pain of 20*l.* *s.* 4, 5.

But if the duties are paid, and entry made, before information brought, the party shall not be prosecuted, tho' it be not strictly within the time limited. *s.* 15.

And the said entry and payment shall be registred by the proper officer, and a receipt given for the duty, of which receipt the officer shall keep an indented duplicate. *s.* 6.

3. Where a person shall die before the end of the year, the person claiming title to the coach, may use it, as the deceased might have done. *s.* 16. Person dying before the end of the year.

4. All the said rates and duties, and all forfeitures and offences, shall be determined by the commissioners of excise (or of appeals, in case of appeal), within the limits of the chief office in *London*; and elsewhere, by two justices near; who shall, on complaint upon oath, summon the party, and on his appearance or contempt, may examine the fact, and on proof thereof either by confession, or oath of one witness, give judgment, and issue warrants for levying penalties by distress and sale (if not redeemed in 14 days); which shall be employed (all necessary charges first deducted) half to the use of the king, and half to the informer: and for want of sufficient distress, they may imprison the party till satisfaction is made. *s.* 13, 14. Power of the justices.

[But as these duties chiefly affect the nobility and persons of distinction, it had been better if the act had been more explicit with respect to the punishment; otherwise it may not be so safe for justices of the peace, upon such vague and general words, to imprison a peer of the realm, or distrain the goods of a member of parliament during their session. But if the justices will proceed, or shall be compelled by *mandamus*, or otherwise, so to do; they must remember withal, that by the 27 *G.* 2. *c.* 20. they may not order the distress to be detained more than eight days, nor less than four.]

5. Persons aggrieved by the determination of the justices, may appeal to the next quarter sessions. *s.* 13. Appeal.

IV. Coffee, tea, and chocolate.

1. For all coffee imported, shall be paid at the custom house, in the whole, the sum of 3*d.* a pound. 10 *G.* *c.* 10. *s.* 48, 49. Duty on coffee.

And an inland duty, to be paid by the maker or seller, of 2*s.* a pound. *id.* *s.* 4, 6.

Except coffee of the growth of the *British* plantations in *America*; which shall pay only 1*s.* 6*d.* a pound. 5 *G.* 2. *c.* 24. *s.* 1.

2. No tea shall be imported, but from the place of its growth; on pain of forfeiture. 11 *G.* *c.* 30. *s.* 8. Duty on tea.

And

And by the 18 G. 2. c. 26. Over and above the customs on importation, there shall be paid on all tea, an inland duty of 1 s. a pound, and 25 l. for every 100 l. of the gross price at which it shall be sold at the *East India* company's sales; which shall be paid in ready money by the proprietor to the collector, before it be taken out of the warehouse. f. 2.

In order to which, the commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the 25 l. *per cent.* shall be ascertained; and to prevent mistakes, the said officers may inspect the company's books. 18 G. 2. c. 26. f. 6.

And every person declared the best bidder at such sale, shall within three days after, deposit with the company or their clerk 40 s. for every tub and chest of tea, on pain of six times the value, and such sale shall be void, and the same shall in 14 days after be put up again. f. 7.

Duty on cocoa nuts and chocolate.

4. No chocolate ready made, or cocoa paste, shall be imported, on pain of forfeiting the same, and double value; and also the bags, casks, and other package. 10 G. c. 10. f. 2.

For cocoa nuts imported, shall be paid at the custom house in the whole, 10 s. a hundred weight. 10 G. c. 10. f. 47, 49.

And if any person shall import any cocoa nut shells or husks, without the nuts, the officers of the customs, excise, or inland duties, may seize them, with the bags, boxes, and package; and after condemation they shall be destroyed or otherwise disposed of, as the respective commissioners, or three of them shall appoint; and they may reward such officer in any sum not exceeding 20 s. a hundred weight. 4 G. 2. c. 14. f. 12.

For all chocolate made or sold in *Great Britain*, shall be paid by the maker or seller, 1 s. 6 d. a pound. 10 G. c. 10. f. 6.

Officers of excise may go on board and search.

4. The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipt without entry and payment of duties, with the boxes, bags, and other package. 11 G. c. 30. f. 1.

Ships hovering near the coast.

5. And where any vessel coming from foreign parts, and having six pounds or more of tea on board, shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such tea, with the chests and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers. 9 G. 2. c. 35. f. 22.

The said goods to be warehoused.

6. Coffee, tea, and cocoa nuts imported, on entry at the custom house, and paying or securing the duties, shall be put into warehouse, to be provided at the charge of the importer, and to be approved of by the commissioners of the customs. 10 G. c. 10. f. 26.

Penalty of not entring and warehousing.

7. And if any person shall import any coffee, tea, or cocoa nuts, without entry, and bringing the same into the warehouse, the same shall be deemed clandestinely run, and may be seized by any

any officer of the customs or inland duties; and the offender shall forfeit the same with the package, and the horses, carts, and carriages. 10 G. c. 10. f. 27.

8. And the owner of the said goods, and the officer for the inland duties (who shall be appointed by the commissioners of the said duties) shall have each a lock and key; and the owner may in presence of the said officer, and of the warehouse keeper (to be appointed by the commissioners of the customs) view, garble, and sort the said goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 G. c. 10. f. 26, 29, 30.

Owner and officer to have each a lock and key.

9. That is to say, As to coffee and tea in the first place;—If they are intended to be taken out for home consumption, the proprietor, within the bills, shall make entry with the receiver or collector in *London*, of so much as he intends to take out of the warehouse, and pay down the duty; and elsewhere shall make entry at the next office, and pay the duties to the collector; and on producing a certificate signed by such collector or receiver (certifying that he has received the duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate; and shall deliver a permit to accompany such coffee or tea so delivered out, which shall also be signed by an officer attending the warehouse, to prevent the seizing thereof. 10 G. c. 10. f. 26.

Taking out of the warehouse coffee and tea for home consumption.

10. And as to cocoa nuts, intended to be taken out of the warehouse, to be made into chocolate;—an entry thereof shall be made by the proprietor with the receiver or collector, as a charge on him and also on the buyer; who shall certify such entry to the warehouse keeper; and on such certificate, the quantity of cocoa nuts mentioned therein shall be delivered out with a permit signed by the officer at such warehouse, to be delivered to the officer where they are intended to be carried, that the same officer may take the same into stock. 10 G. c. 10. f. 26.

Taking out of the warehouse cocoa nuts to be made into chocolate.

11. And as to coffee, tea, and chocolate intended for exportation;—it shall be delivered out of the warehouse, on security given that it shall be exported, and not relanded; which security shall be discharged, on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants there, that the same were there landed, or on proof by credible persons that it was taken by enemies, or perished in the seas. 10 G. c. 10. f. 26.

Taking out of the warehouse coffee, tea, and chocolate, for exportation.

But by the 18 G. 2. c. 26. No Drawback shall be allowed on tea exported. f. 5. Saving that it may be exported to *Ireland*, or the *British* plantations in *America*, without paying the inland duties before mentioned. 21 G. 2. c. 14.

12. And no seller or dealer shall receive out of the warehouse, less than one hundred weight of each sort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than a hundred weight. 10 G. c. 10. f 34.

What quantity shall be taken out at a time.

13. And the warehouse keeper and officer appointed by the commissioners of the inland duties shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa

Warehouse keeper and officer to keep an account.

nuts brought into and carried out of the warehouſe, and the day and time when, and how much was delivered for home conſumption, and how much for exportation, and the names of thoſe for whom it was delivered out; and ſhall every ſix weeks, or oftner if required, tranſmit an account thereof in writing and on oath to the reſpective commiſſioners, with an account how much is remaining in the warehouſe: Which ſaid commiſſioners ſhall in one month appoint a perſon to inſpect the books and warehouſes, and examine the accounts; and if it ſhall appear that any was otherwiſe delivered out, or before payment of the duties on ſuch coffee and tea as were ſold for home conſumption, or giving ſecurity for what was delivered for exportation, the warehouſe keeper and officer reſpectively offending ſhall forfeit 100 *l.* and be diſabled to hold any publick office. 10 *G. c.* 10. *ſ.* 29.

Who ſhall be deemed a dealer in coffee, tea, and chocolate.

14. Every perſon who ſhall keep a publick houſe, ſhop, cellar, or other warehouſe, for ſelling of brandy or other ſpirituous liquors, and ſhall have in his cuſtody any coffee, tea, chocolate, or cocoa nuts above ſix pounds weight, ſhall be deemed a dealer in the ſaid commodities. 11 *G. c.* 30. *ſ.* 4.

Licence for retailing.

15. No perſon ſhall be permitted to ſell or retail any coffee, chocolate, ſherbet, or tea, without licence firſt had by order of the general ſeſſions of the peace in the reſpective counties (certificate being firſt ſhewed, that he hath given good ſecurity for payment of the duties to the king); or from the chief magiſtrate of the place in whoſe juriſdiction he ſhall inhabit. And no licence ſhall be granted to any retailer, till ſuch ſecurity ſhall be given by recognizance or otherwiſe: For which licence, recognizance, and ſecurity, 12 *d.* ſhall be given, and no more, for the payment of the exciſe. And perſons ſelling without ſuch licence and ſecurity, ſhall forfeit 5 *l.* a month. 15 *C.* 2. *c.* 11. *ſ.* 15.

Houſes of manufacturing and ſale to be entred.

16. Every druggiſt, grocer, chandler, coffee-houſe keeper, chocolate-houſe keeper, and other perſon ſelling or dealing in coffee, tea, and cocoa nuts, or making or ſelling chocolate, either by wholeſale or retail, ſhall before he take any the ſaid goods into his poſſeſſion make entry in writing of all ſtorehouſes, ſhops, rooms, and other places intended to be uſed by him, at the office for the diviſion; on pain of forfeiting 200 *l.* and the ſaid goods found therein, with the caniſters, bags, veſſels, and other package. 10 *G. c.* 10. *ſ.* 10.

And no entry of any ſhop, warehouſe, room, or utenſil for carrying on any trades aforeſaid, ſhall be deemed a legal entry, unleſs made in the name of the real owner of, and trader in ſuch ſhop; and the perſon who acts as viſible owner of ſuch place, or principal manager in ſuch trade, ſhall be deemed the real owner and trader, and conſequently liable for any ſtock found there, or for not making entries, or other offences. 18 *G.* 2. *c.* 26. *ſ.* 8.

And none of the ſaid goods ſhall be offered to ſale but in places entred, or in a warehouſe to be approved of by the commiſſioners; on pain of forfeiting the ſame and treble value, together with the caniſters, bags, and other package. 10 *G. c.* 10. *ſ.* 14.

Notice of bringing in.

17. No coffee, tea, cocoa nuts, or chocolate ſhall be brought into any ſuch ſhop or other place, without firſt giving notice there-

of

of to the officer of the diviſion, and leaving with him a certificate ſigned by the officer of the diviſion from whence they were brought, that the duties on ſuch coffee, tea, and chocolate have been paid, or that they have been condemned as forfeited; and in caſe of bringing in of cocoa nuts, that they have been entred with the officers of the cuſtoms, or were condemned as forfeited; and expreſſing the quantity and quality, and where the duties were paid, or at what port the cuſtoms and duties were paid for the cocoa nuts, or were condemned; on pain of forfeiting the ſame and treble value, with the caniſters, bags, and other package. 10 *G. c.* 10. *ſ.* 11.

Permit when ſold to the retailer.

18. And where any of them ſhall be ſold in the ſaid entred places, above the weight of 6 *lb.* the officer ſhall, on requeſt of the ſeller, give to the buyer a certificate ſigned by him, expreſſing the quantity, and the names of the buyer and ſeller, and that the duties have been paid, or that the cocoa nuts have been entred with the officers of the cuſtoms, or that they have been condemned as forfeited; which certificate ſhall be left with the officer of the diviſion to which the ſame is intended to be carried, to prevent the ſeizing thereof. 10 *G. c.* 10. *ſ.* 15.

Officers to enter and ſurvey.

19. The officers ſhall be permitted at all times by day, to enter all warehouſes, ſhops, and other places, and by weighing, gaging, or otherwiſe, to take an account of the quantity and ſorts; in the weighing whereof the owner ſhall be aſſiſting, and keep juſt weights and ſcales; on pain of 100 *l.* 10 *G. c.* 10. *ſ.* 12.

Search for goods concealed.

20. And if any officer ſhall have cauſe to ſuſpect, that any the ſaid goods ſhall be concealed, if it is within the bills, then on oath made before two commiſſioners, or elſewhere, before one or more juſtices, ſetting forth the ground of his ſuſpicion, they may by warrant authorize ſuch officer by day or night, but if in the night then in preſence of a conſtable, to enter the place ſuſpected, and ſeize and carry away the ſame (if found) as forfeited, together with the bags, caniſters, and other package; and if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 100 *l.* 10 *G. c.* 10. *ſ.* 13.

And if any ſeller or dealer ſhall conceal any the ſaid goods, he ſhall forfeit the ſame and treble value, with the caniſters, bags, and other package; and if any perſon ſhall obſtruct the officer in ſeizing any the ſaid goods by virtue of this or any future act, or after ſeizure ſhall endeavour to reſcue the ſame, or break or damage the veſſels or package; he ſhall forfeit 50 *l. ſ.* 39, 40.

And by the 11 *G. c.* 30. Two commiſſioners or any juſtice of peace, on complaint by an officer on oath, that he ſuſpects any dealer not to have made true entries, ſetting forth in ſuch oath the cauſes of his ſuſpicion, may ſummon ſuch ſuſpected perſon to appear with his books, and examine him on oath touching the truth of his entry; and if he ſhall refuſe or neglect to appear, or to make ſuch oath, he ſhall forfeit 20 *l. ſ.* 12.

True manufacturing of coffee.

21. No perſon ſhall mix with coffee, to increaſe the weight, any butter, greaſe, water, or other materials; on pain of 100 *l.* and if any dealer ſhall knowingly buy or ſell any ſo mixed, he ſhall forfeit 100 *l.* 11 *G. c.* 30. *ſ.* 9.

And the commissioners may appoint houses and proper materials for roasting of coffee berries, and officers to attend them, and one person at each house well skilled in roasting of coffee; to which all persons may resort to have their coffee berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8 *s.* a hundred weight. 10 *G. c.* 10. *s.* 31.

But the sellers and dealers may if they think proper, send their own roasters; who shall be permitted to roast the same, paying 3 *s.* a hundred weight. 10 *G. c.* 10. *s.* 32.

And during the continuance of such roasting houses, no coffee berries shall be roasted, burned, or dried, but in one such house; on pain of forfeiting the same, and 5 *s.* a pound. 10 *G. c.* 10. *s.* 33.

And if any officer or roaster shall neglect or refuse to attend such house, he shall forfeit 10 *l.* for the first offence, and 20 *l.* for the second, and be incapable to hold any office in the revenue. 10 *G. c.* 10. *s.* 34.

True manufacturing of tea.

22. No dealer in tea, or manufacturer, or dyer thereof, shall adulterate it, or alter, or manufacture it with any drug, or mix it with any leaf or other ingredient; on pain of forfeiting the same, and 100 *l.* 11 *G. c.* 30. *s.* 5.

And by the 4 *G.* 2. *c.* 14. If any dealer in tea shall dye, or manufacture, any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea, or shall mix or colour such leaves of tea, with *terra japonica*, sugar, molosses, clay, logwood, or any other ingredients; or shall offer to sale, or have in his custody any such leaves in imitation of tea, or any such stained leaves of tea mixed with any ingredients; he shall forfeit for every pound weight thereof 10 *l.* *s.* 11.

True manufacturing and stamping of chocolate.

23. The maker of chocolate, if within the bills, shall weekly, and elsewhere every six Weeks, make entry in writing at the next office, of all chocolate made by him within that time, setting forth the weight thereof, on pain of 50 *l.* Which entry shall be upon oath of the maker or his chief workman, according to the best of his knowledge and belief, to be administred within the bills by such officers as the commissioners shall appoint, and elsewhere by the collectors and supervisors. But no person shall be obliged to go further to make entry, than the next market town. 10 *G. c.* 10. *s.* 17.

And he shall in one week within the bills, and elsewhere in six weeks after entry, clear off the duties, on pain of 50 *l.* besides the duty; and he shall after default in payment, sell or deliver none out till the duty is paid, on pain of treble value. 10 *G. c.* 10. *s.* 18.

And he shall at the time of entry produce the same so made, tied with thread in papers of one pound each; which shall be marked or stamped by the officers. 10 *G. c.* 10. *s.* 19.

And if any person shall counterfeit the said stamp, or shall knowingly sell any chocolate with a counterfeit stamp; or shall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the stamp on; he shall forfeit 500 *l.* and be

be committed to the next county gaol for twelve months. 10 G. c. 10. ſ. 22. 11 G. c. 30. ſ. 13.

And if any ſtamped chocolate ſhall be damaged, the owner may in preſence of an officer open it, and deliver the ſtamps to the officer, and work it over again with freſh cocoa nuts, and have it reſtamped, paying duty for what is added. 11 G. c. 30. ſ. 14.

But on reworking chocolate, proof ſhall be made (before the commiſſioners within the bills, and before two juſtices elſewhere) that the duties for the cocoa nuts whereof it was made, and for thoſe alſo which are added, have been paid, and the chocolate entred. 11 G. c. 30. ſ. 15.

Chocolate made for private families.

24. If any perſon ſhall be minded to make chocolate for his own family, and not for ſale, and ſhall give notice thereof under his hand to the officer of the diviſion, three days before he begin to make, in which notice ſhall be ſpecified the quantity of cocoa nuts deſigned to be made into chocolate, the name of the perſon to be employed in the making, and the place where; in ſuch caſe the officer ſhall give a permiſſion under his hand for making the ſame, and the place ſhall not be liable in reſpect thereof to be ſurveyed. 10 G. c. 10. ſ. 23.

And the perſon for whom it is made, ſhall in three days after finiſhing, make entry on oath with the officer, of the whole quantity then made by virtue of ſuch permit, and bring the ſame wrapt up as before, to have it ſtamped, and ſhall pay the duty; and in default thereof, ſhall forfeit the ſame, and treble value. ſ. 24.

And no perſon ſhall be permitted to make into chocolate for his own private uſe, leſs than half a hundred weight of cocoa nuts at a time. ſ. 25.

Penalty of retailing the ſame without a permit, or pedlars with one.

25. And if any perſon ſhall offer any tea to ſale, not having a permit; or if any pedlar or other trading perſon, going from town to town, or other mens houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch tea to ſale, altho' he have a permit; the perſon to whom it is offered to ſale, may ſeize and detain the ſame, and carry it to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice of the peace to be by him committed to priſon, and proſecuted for the penalties incurred for ſuch offence; and ſuch tea may be proſecuted in the name of the perſon who ſtopped or ſeized the ſame, in like manner as if it had been ſeized by an officer. 9 G. 2. c. 35. ſ. 20.

And none of the ſaid goods above ſix pounds weight, ſhall be removed or carried from one part of the kingdom to another, without a permit ſigned by an officer, ſignifying the names and places of abode of the buyer and ſeller, and the quantity and ſpecies of the goods, and that the duty hath been paid, or the cocoa nuts entred as aforeſaid, or that they have been condemned as forfeited; on pain of forfeiting the ſame, together with the caniſters, bags, or other package: Which permit ſhall be left with the officer of the diviſion to which the ſame ſhall be carried, to prevent the ſeizure thereof; in which permit ſhall be expreſſed the time for which it ſhall continue in force. 10 G. c. 10. ſ. 16.

And if any person shall take out a permit for removing coffee, tea, or cocoa nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as forfeited, as will answer the said quantity in the permit: But no person shall receive a permit, without the direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50 *l.* and in default of payment, he shall be imprisoned three months. 11 G. *c.* 30. *s.* 11.

Account to be kept of small quantities consumed.

26. All sellers and dealers in any the said goods, and all makers of chocolate, and coffee or chocolate house keepers, who shall consume the same in small quantities under six pounds, shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them under six pounds; and shall keep another book, wherein they shall enter each parcel above six pounds, which they shall sell in each day, which shall not be removed without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and where it is to be carried, and that the duties were paid, or the cocoa nuts entred, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers: and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said books shall from time to time lie open, and be perused by the officer: And if such seller or dealer shall omit his duty in regard to the said books, he shall forfeit 100 *l.* 10 G. *c.* 10. *s.* 35.

But by the 12 G. *c.* 28. No dealer in cocoa nuts shall dispose of less than 28 pounds at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer; on pain of 20 *l.* for each pound of cocoa nuts otherwise disposed of, and of 20 *l.* for default about the entry. *s.* 29.

Power of the justices.

27. All the said penalties and forfeitures shall be recovered and mitigated as by the laws of excise or in the courts at *Westminster*; and be employed half to the use of the king, and half to the informer. 10 G. *c.* 10. *s.* 41. 11 G. *c.* 30. *s.* 39. 4 G. 2. *c.* 14. *s.* 10. 18 G. 2. *c.* 26. *s* 14. 24 G. 2. *c.* 40. *s.* 33.

And by the 12 G. *c.* 28. the penalties on the said act shall be recovered as by the laws of the customs or excise respectively. *s.* 33.

Proof to lie on the claimer.

28. And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. 10 G. *c.* 10. *s.* 28.

Condemnation and sale.

29. The commissioners shall cause all tea and coffee seized in *London*, and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London*. 12 G. *c.* 28. *s.* 1. Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper. *s.* 16.

But

But if they think fit, they may cause such tea as cannot be sold for 5 *s.* a pound, to be burnt or otherwise destroyed; and the person making seizure, to be rewarded as they shall think proper, not exceeding 1 *s.* 6 *d.* for each pound of such tea. *s.* 3.

Reward.

30. But no officer of the customs, or other person, shall be intitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be removed without a permit from such officer of excise, on pain of reseizure. 12 *G.* *c.* 28. *s.* 6.

Utensils liable.

31. All stock and utensils found in the shops or other places aforesaid, shall be liable to the duties and forfeitures. 18 *G.* 2. *c.* 26. *s.* 8.

V. Glass.

Duty on importation.

1. By the 19 *G.* 2. *c.* 12. Certain additional duties are laid upon glass imported, over and above what it shall pay by the 2 *W.* *Sess.* 2. *c.* 4. and by the book of rates of the 12 *C.* 2. which shall be under the management of the commissioners of the customs. *s.* 2, 8.

Inland duty.

2. Moreover, there shall be paid a duty of 9 *s.* 4 *d.* a hundred weight, upon all materials, metal, or other preparation for making of crown, plate, and flint glass, and all white glass; and of 2 *s.* 4 *d.* a hundred weight, upon all materials for making common bottles, and all other green glass: To be paid by the maker; and to be under the management of the commissioners of excise. *s.* 4, 5, 6, 9.

Place of making to be entred.

3. In order whereunto, every maker of glass shall first make entry in writing at the next excise office, of his name, and of all his furnaces, pots, pot chambers, warehouses, rooms, and other places for making or keeping of glass, or of materials for making it; and if he shall use the same, without first giving notice to the proper officer, he shall forfeit 50 *l.* *s.* 10.

Notice of beginning to work.

4. And he shall, before he begin to fill any pot, give 12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glass to be made; on pain of 50 *l.* *s.* 11.

And if the filling be not begun pursuant to such notice, the said notice shall be void. *s.* 12.

Officer to enter and survey.

5. The officers shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glass; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glass maker; and if he shall not leave such copy on demand, he shall forfeit 40 *s.* *s.* 13.

And if any person shall obstruct any officer in the execution of his duty on this act, he shall forfeit 50 *l.* *s.* 16.

Maker to keep scales and weights.

6. And the maker shall keep scales and weights at the place where the glass is made, and assist the officer in weighing; on pain of 50 *l.* *s.* 14.

Entry of glass made.

7. Every maker within the bills shall monthly, and elsewhere once in six weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 20 *l.* which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. *s.* 17.

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making such entries. *s.* 18.

Payment of the duty.

8. The maker, within the bills, shall in four weeks, and elsewhere in six weeks after entry, pay off the duties; on pain of double duty. *s.* 19.

Allowance for glass spoiled in making.

9. If any pot filled with materials shall crack or break, whereby any part thereof shall become unfit for service, on proof thereof to the commissioners where such glass house shall be situated, they shall make an allowance for the same. *s.* 15.

Exportation.

10. Any person who hath paid the duty, may export the glass; and have the duty drawn back; and if it shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation. *s.* 20, 21, 22.

And no glass shall be imported into *Ireland*, other than the manufacture of *Great Britain*; on pain of forfeiting the same, and the ship, and 10 *s.* a pound. *s.* 23.

The like penalty for exporting glass out of *Ireland*. *s.* 24.

Power of the justices.

11. The penalties to be recovered or mitigated as by the laws of excise, or in the courts at *Westminster*; and to be employed, half to the use of the king, and half to him that shall sue. *s.* 39.

VI. Hops.

Duty on hops imported.

1. By the 9 *An. c.* 12. an additional duty of 3 *d.* a pound is laid on hops imported, over and above all other duties; which shall be under the management of the officers of the customs. *s.* 1, 2, 3, 4.

And if any foreign hops shall be landed before entry and duty paid, or without warrant for landing; the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 5 *l.* a hundred weight. 7 *G.* 2. *c.* 19. *s.* 1.

Duty on hops grown in Great Britain.

2. And by the said act of the 9 *An. c.* 12. there shall be paid a duty of 1 *d.* for every pound of hops grown in *Great Britain*, cured and made fit for use; the same to be paid by the owner, within six months after they shall be cured and put into bags; which duty shall be under the management of the commissioners and officers of excise. *s.* 1, 5.

Hop grounds to be entred.

3. In order whereunto, every person who shall plant or have growing any hops, for sale or not for sale, shall yearly on or before *Aug.* 1. give or send notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township,

townſhip, or place, and the name of the owner or occupier; on pain of 40 *s.* an acre. 9 *An. c.* 12. *ſ.* 6.

But ſuch perſon ſhall not be obliged, for giving notice, to go further than the next market town. *ſ.* 7.

And the officer who ſhall receive the notice, ſhall in five days enter the ſame in a book to be kept at the office for that purpoſe; on pain of 40 *s.* *ſ.* 7.

Places of curing and keeping to be entred.

4. Alſo no perſon ſhall uſe any ouſt, ſtorehouſe, or other place, or any kiln for curing or keeping of hops, unleſs notice thereof ſhall have been given, on pain of 50 *l.* 9 *An. c.* 12. *ſ.* 8.

And all hops ſhall in ſix weeks after gathering, be brought to be cured and bagged at ſuch ouſts or places notified, and no other; on pain of 5 *s.* a pound. *ſ.* 9.

Officer to enter and ſurvey.

5. The officer ſhall at all times, by day or night, and if in the night in the preſence of a conſtable, be permitted on his requeſt to enter into the ouſt, ſtorehouſe, or other place, uſed by any perſon for growing, curing, or keeping of hops; and if the planter or owner ſhall obſtruct him, he ſhall forfeit 20 *l.* 9 *An. c.* 12. *ſ.* 15.

Notice of bagging and weighing.

6. The owners of hops, before they reſpectively begin to bag or weigh their hops, ſhall ſend notices in writing under their hands to the next exciſe office or officer, of the day and hour when they intend to begin either to bag or to weigh; which notice, as to ſuch as ſhall be bagged or weighed the firſt week, ſhall be given in 24 hours before; and as to every other bagging or weighing, 48 hours; on pain of 50 *l.* 6 *G. c.* 21. *ſ.* 25.

Officer to attend at the bagging and weighing.

7. And the exciſe officer ſhall attend at the bagging of every parcel of hops, and at the weighing thereof, and ſhall cauſe the weight (the tare of the bag being abated) to be marked on every bag; and ſhall cauſe an entry of the ſaid weight to be made in his book; and ſhall make return thereof in writing to the commiſſioners or whom they ſhall appoint, leaving a true copy (if demanded) of ſuch return under his hand with the planter or owner; and if he ſhall neglect or refuſe to leave ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 5 *l.* 9 *An. c.* 12. *ſ.* 11.

And the allowance ſhall be made after the rate of ten pounds *per centum*, upon the weight of every bag, for the tare thereof. *ſ.* 13.

Owner to keep ſcales and weights.

8. The owners ſhall keep at their ouſts, ſtorehouſes, and places of keeping their hops, weights and ſcales; and permit the officer to uſe them; and ſhall not ſuffer any falſe weights to be uſed; on pain of 20 *l.* 6 *G. c.* 21. *ſ.* 26.

Hops may be put into caſks inſtead of bags.

9. The owners may, if they think fit, put the hops into caſks inſtead of bags; giving the like notice, and being ſubject to the ſame regulations, for caſking as for bagging. 6 *G. c.* 21. *ſ.* 27, 28.

And the officer ſhall cauſe the caſk to be weighed, and the weight to be marked on the caſk, and alſo the weight of the hops therein. *ſ.* 28.

Deceit in bagging.

10. No perſon ſhall take any hops of foreign growth out of the bags in which they are imported, and rebag the ſame in *Britiſh*

tiſh bagging, in order to ſell or export them as *Britiſh* hops; on pain of 10*l.* a hundred weight: And if any perſon ſhall endeavour to defraud the king of the duty, by uſing twice or oftner the ſame bag, with the officer's mark thereupon; he ſhall forfeit 40*l.* 9 *An. c.* 12. *ſ.* 23.

Removal before bagging.

11. No planter or owner ſhall (on pain of 50*l.*) remove from his ouſt, ſtorehouſe, or other place, any hops, until they have been cured, bagged, and weighed, and the duties aſcertained; unleſs where the officer, after notice, ſhall not attend the bagging and weighing. 9 *An. c.* 12. *ſ.* 16.

Concealing.

12. If any planter or owner ſhall conceal any hops, to avoid the duties; he ſhall forfeit 20*l.* and the hops concealed. 9 *An. c.* 12. *ſ.* 17.

Privately conveying.

13. And if any gatherer of hops, or other perſon, ſhall privately convey any hops from the place of growing, or where they ſhall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he ſhall forfeit 5*s.* a pound. 9 *An. c.* 12. *ſ.* 18.

Payment of the duties.

14. The planter or owner ſhall in ſix months after the hops ſhall be cured, bagged, or weighed, pay off the duties; on pain of double duty. 9 *An. c.* 12. *ſ.* 14.

Adulterating hops.

15. If any perſon ſhall mix with hops any drug or ingredient to alter the colour or ſcent; he ſhall forfeit 5*l.* a hundred weight. 7 *G.* 2. *c.* 19. *ſ.* 2.

Uſing other things inſtead of hops.

16. No common brewer, innkeeper, or victualler ſhall uſe any broom, wormwood, or any other bitter ingredient, to ſerve inſtead of hops; on pain of 20*l.* (Except the infuſing of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 *An. c.* 12. *ſ.* 24.

Exportation.

17. Hops which have paid the duty, may be exported to *Ireland.* 9 *An. c.* 12. *ſ.* 21.

But there ſhall be no drawback of the duties. 6 *G. c.* 11. *ſ.* 40.

And no foreign hops, other than of *Britiſh* growth, ſhall be landed in *Ireland.* 7 *G.* 2. *c.* 19 *ſ.* 2.

Penalties how to be recovered.

18. The penalties aforeſaid ſhall be recovered and mitigated as by the laws of exciſe, and diſtributed half to the king, and half to him that ſhall ſue. 9 *An. c.* 12. *ſ.* 26. 24 *G.* 2. *c.* 40. *ſ.* 33.

Hops liable to diſtreſs for the duties and penalties.

19. And all hops in the cuſtody of any planter or owner, or perſon in truſt for him, ſhall be liable to the duties in arrear, and to the penalties; in the ſame manner as if the debtor or offender were the lawful owner. 9 *An. c.* 12. *ſ.* 19.

Cutting hop binds.

20. If any perſon ſhall unlawfully and maliciouſly cut any hop binds growing on poles, in any plantation of hops; he ſhall be guilty of felony without benefit of clergy. 6 *G.* 2. *c.* 37. *ſ.* 5, 6.

Which offence is treated of more at large in the title Black act.

VII. Leather.

1. By the 4 *W.* *c.* 5. and 9 *An.* *c.* 11. and 10 *An.* *c.* 26. certain additional duties are laid on all hides, ſkins, vellum, and parchment imported, over and above what they are charged in the book of rates: which ſhall be under the management of the commiſſioners of the cuſtoms. Duty on leather imported.

And after the duty ſhall be paid on importation, the officers of the cuſtoms ſhall cauſe every hide or ſkin to be marked, to denote the payment of the duty. 9 *An.* *c.* 11. *ſ.* 6.

2. And by the ſaid acts of 9 *An.* *c.* 11. and 10 *An.* *c.* 26. certain duties are impoſed on hides and ſkins, tanned, tawed, or dreſſed in *Great Britain*; and on vellum and parchment made in *Great Britain*; as follows: Duty on leather dreſſed in Great Britain.

On all tanned hides 1 *d.* ½ a pound.

Calf, kips, hogs, and dog ſkins tanned 1 *d.* ½ a pound.

Goat ſkins tanned with ſhomack, or otherwiſe, to reſemble *Spaniſh* leather, 4 *d.* a pound.

Sheep ſkins tanned for roans after the nature of *Spaniſh* leather, 2 *d.* a pound.

Sheep ſkins and lamb ſkins tanned for glovers and bazils 1 *d.* ½ a pound.

Tanned ſkins not before charged 30 *l.* in the hundred, according to the real value.

All the above to be paid by the tanner.

Horſe hides dreſſed in allom and ſalt or meal, or otherwiſe tawed, 1 *s.* 6 *d.* a hide.

Hides of ſteers, cows, and all other (except horſe hides (dreſſed in allom and ſalt, or meal, or otherwiſe tawed, 3 *s.* a hide.

Calves ſkins and kips dreſſed in allom and ſalt or meal, or otherwiſe tawed, 1 *d.* ½ a pound.

Slinks ſo dreſſed or tawed, with the hair on, 3 *s.* a dozen.

Slinks ſo dreſſed or tawed, without hair, 1 *s.* a dozen.

Dog ſkins ſo dreſſed or tawed, 1 *s.* a dozen.

Buck and doe ſkins (except what paid the duty on importation) dreſſed in allom and ſalt or meal, or otherwiſe tawed, 6 *d.* a pound.

Kid ſkins ſo dreſſed or tawed (except what paid the duty on importation) 1 *s.* a dozen.

Goat ſkins ſo dreſſed or tawed, 2 *s.* a dozen.

Beaver ſkins ſo tawed, 2 *s.* a dozen.

Sheep ſkins and lamb ſkins ſo dreſſed or tawed, 1 *d.* ¼ a pound, and no more, altho they may have been dipped or ſteeped in the tanner's wooze made of bark or ſhomack before ſuch dreſſing (3 *G.* *c.* 4. *ſ.* 13.)

All other tawed ſkins not before charged, 30 *l.* for every 100 *l.* value.

To be paid by the tawers or makers.

For hides and ſkins dreſſed in oil, 6 *d.* a pound.

Deer, goat, and beavers ſkins, dreſſed in oil, 6 *d.* a pound.

Calves

Calves skins dressed in oil, 8 *d.* a pound.

Sheep and lamb skins dressed in oil, 3 *d.* a pound.

All skins dressed in oil, not before charged, 15 *l.* in the hundred, according to the real value.

To be paid by the oil leather dressers.

For all vellum made in *Great Britain*, 3 *s.* a dozen.

Parchment made in *Great Britain*, 1 *s.* 6 *d.* a dozen.

But such small pieces as have been commonly called pates and tails, and are tanned after they are cut off from the hides, shall not be charged with the duty by weight, but with the duty *ad valorem*; and the same need not to be marked as is hereafter directed. 9 *An. c.* 11. *s.* 46.

What it meant by hides tanned, dressed in oil, and tawed.

3. By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shomack; and by hides and skins *dressed in oil*, are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allom and salt, or meal, or other ingredients properly used by the tawers of white leather. 9 *An. c.* 11. *s.* 3.

Who shall be deemed tawers or dressers.

4. Collar makers, glovers, bridle cutters, and others who dress skins or hides, or pieces thereof, in oil, allom and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 9 *An. c.* 11. *s.* 28.

Duty ad valorem how to be ascertained.

5. The value of the said hides and skins which are to pay *ad valorem*, shall be as they are worth to be sold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dresser. 9 *An. c.* 11. *s.* 14.

No leather to be twice charged.

6. Any hide or skin which hath once paid the duty, shall not be charged under any other denomination. 9 *An. c.* 11. *s.* 3.

Officers for these duties.

7. The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. 9 *An. c.* 11. *s.* 13, 38.

Places of working to be entred.

8. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same; on pain of 50 *l.* 9 *An. c.* 11. *s.* 15.

And if any person shall not make such entry, or shall use any private tan yard, workhouse, pit, fat, mill, or place, he shall forfeit 20 *l.* and the goods found in such private tan yard or place not entred, or the value thereof, shall also be forfeited. 9 *An. c.* 11. *s.* 17.

Officers to enter and survey.

9. The officers at all seasonable times, in the day time, may enter into any tan yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10 *l.* 9 *An. c.* 11. *s.* 17.

10. The

10. The said tanners and others shall give notice to the officer, of their places for drying and keeping of hides or skins, vellum or parchment; and they shall give two days notice in writing to the officer, before they take the said goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they shall permit the officers to take an account; and shall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administred by any justice of the peace, or collector or supervisor; and they shall not remove any of the said goods, from the place of drying, until the duty be first charged, entred, and marked. 9 *An. c.* 11. *s.* 16. Notice of removing to the place of drying.

And if any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act; he shall forfeit 20 *l.* and also such goods unlawfully removed, or the value thereof shall be forfeited. *s.* 17.

11. And if any tanner or other such person shall conceal any hide or skin, vellum or parchment, or any part thereof; he shall forfeit 20 *l.* and also the goods concealed, or the value thereof. 9 *An. c.* 11. *s.* 17. Concealing to avoid the duty.

12. Tanners, and other the said persons, shall keep scales and weights; and sworn officers shall be appointed, for the weighing and other matters to be performed at every such yard or dressing place. 9 *An. c.* 11. *s.* 18. Tanners to keep scales and weights.

And if he shall not keep just scales and weights, or shall not permit his hides or skins to be weighed, or neglect or refuse to bring the scales, or to assist at the weighing; he shall forfeit 50 *l.* *s.* 26.

13. Tanners, and other the said persons, shall before any the said goods be removed from the place of dressing, drying, or keeping, give two days notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the scales, and assist in weighing; and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged *ad valorem*, by his oath to be taken before the said officer, or a justice of the peace. 9 *An. c.* 11. *s.* 19. Duty to be ascertained before removal.

14. And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners or whom they shall appoint, leaving a true copy thereof under his hand, with such tanner or other person. 9 *An. c.* 11. *s.* 20. Charge by the officer.

15. Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, to be marked. 9 *An. c.* 11. *s.* 21. Leather to be marked.

16. And

In what part to be marked.

16. And if ſuch tanner or other perſon ſhall deſire the mark to be made, on any particular part of the hide or ſkin; the officer ſhall mark it accordingly. 9 *An. c.* 11. *ſ.* 22.

Removing before marked.

17. And if any tanner, or other ſuch perſon, ſhall remove from his yard or drying place any the ſaid goods, before the duties ſhall be charged, and before they be marked; or if any buyer ſhall carry away the ſame before they be marked; he ſhall forfeit 50 *l.* and the ſaid goods ſo unlawfully ſold or removed, ſhall alſo be forfeited. 9 *An. c.* 11. *ſ.* 26.

Counterfeiting the ſtamp.

18. And if any perſon ſhall counterfeit the ſtamp, or knowingly ſell any the ſaid goods with a counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy. 9 *An. c.* 11. *ſ.* 44.

Leather ſtamped to be kept ſeparate.

19. And to prevent frauds between the officers and tradeſmen, all tanners, tawers, and dreſſers of hides, ſkins, vellom, and parchment, ſhall keep thoſe which have not been ſtamped, from thoſe which have, and alſo thoſe which have been laſt ſtamped, from thoſe which have been ſtamped before, for 24 hours within the bills, and for two days elſewhere; unleſs they ſhall have ſooner been weighed and taken account of by the ſurveyor or ſupervifor: on pain of 10 *l.* 5 *G. c.* 2. *ſ.* 10.

Payment of the duties.

20. Perſons within the bills of mortality ſhall pay off the duties in 14 days to the commiſſioners, and elſewhere in ſix weeks to the collectors, after the ſaid goods ſhall be marked. 9 *An. c.* 11. *ſ.* 23.

But no perſon ſhall be obliged, for payment of the duties, to go farther than the next market town. *ſ.* 24.

And perſons not paying as aforeſaid ſhall forfeit double duty; and ſhall not deliver out any the ſaid goods until the duty be paid, on pain of double value. *ſ.* 25.

Tanners to balance accounts with the officers.

21. Every tanner, and other ſuch perſon, ſhall once in three months (if demanded) make an account with the officer, of the goods taken out of the wooze or other ingredients, and of his entries thereof, and balance the ſaid account by the goods which have been charged, and thoſe which are in his poſſeſſion unmarked and uncharged; on pain of 50 *l.* 9 *An. c.* 11. *ſ.* 27.

Exportation.

22. On exportation of hides or ſkins, tanned, tawed, or dreſſed, and marked, and of boots, ſhoes, gloves, or other manufactures made of leather, chargeable for the duty by weight; a drawback ſhall be allowed of two thirds of the duty. 9 *An. c.* 11. *ſ.* 39. 12 *An. ſt.* 2. *c.* 9. *ſ.* 65.

Except that for tanned leather manufactured into boots, ſhoes, gloves, and other wares; a drawback of 1 *d.* $\frac{1}{2}$ for a pound weight, ſhall be allowed in lieu of the ſaid two thirds of the duty. 12 *An. ſt.* 2. *c.* 9. *ſ.* 64.

Penalties how recoverable.

23. Any two juſtices reſiding near, may hear and determine offences; who ſhall on information or complaint in three months after ſeizure made, or offence committed, ſummon the party accuſed, and the witneſſes, and on appearance or contempt of the party (on proof of notice given) ſhall examine witneſſes on oath, and give judgment, and iſſue warrants for levying the pecuniary

penalties

penalties by diſtreſs and ſale (if not redeemed in ſix days). 9 *An.* *c.* 11. *ſ.* 36.

24. And they may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and ſo as the mitigation do not reduce the penalties to leſs than one fourth part, over and above the charges. 9 *An.* *c.* 11. *ſ.* 37. Mitigation.

25. Perſons aggrieved may appeal to the next ſeſſions, who may determine the ſame, and iſſue warrants for levying the penalties. 9 *An.* *c.* 11. *ſ.* 36. Appeal.

26. And no *certiorari* ſhall be allowed. 9 *An.* *c.* 11. *ſ.* 47. Certiorari.

VIII. Linen cloth, and ſilks.

1. By the 10 *An.* *c.* 19. and the 12 *An.* *ſt.* 1. *c.* 9. There ſhall be paid for all chequered and ſtriped linens, and upon all linens printed, painted, ſtained, or dyed, after the manufacture, or in the thread or yarn, in any foreign parts, which ſhall be imported, and may lawfully be worn, over and above other duties, 30 *l.* for every 100 *l.* value; which ſhall be under the management of the commiſſioners of the cuſtoms. Duty on importation.

Except lawns, ſtriped or chequered linens, being all white, and neckcloths ſtriped at the end only, and alſo barras, or packing canvas, and buckrams. 12 *An.* *ſt.* 2. *c.* 9. *ſ.* 5. 12 *An.* *ſt.* 2. *c.* 19.

And after the duty is paid, the ſaid printed linens imported ſhall be ſtamped by the officers of the cuſtoms. 10 *An.* *c.* 19. *ſ.* 68.

2. By the 10 *An.* *c.* 19. and the 12 *An.* *ſt.* 2. *c.* 9. Over and above the duties payable on importation of any of them, there ſhall be paid, for all *ſilks* printed, ſtained, or painted in *Great Britain* (ſilk handkerchiefs excepted) 12 *d.* a yard in length, reckoning half a yard for the breadth. Home duties.

And for all *ſilk handkerchiefs* ſo printed, ſtained, or painted in *Great Britain*, 4 *d.* a yard ſquare.

And for all *callicoes* printed, ſtained, painted, or dyed in *Great Britain*, 6 *d.* for every yard in length, reckoning one yard wide, or within one eighth thereof.

And for all *linen* ſtuffs printed, ſtained, painted, or dyed in *Great Britain*, 3 *d.* a yard in length, reckoning yard wide.

Except ſuch callicoes, linens, and fuſtians as ſhall be dyed throughout of one colour only, and ſtuffs made of woollen, or whereof the greateſt part in value ſhall be woollen.

3. But it is to be obſerved, that ſuch painted or ſtained callicoes cannot be of uſe for wearing apparel, and therefore the printing or ſtaining of them muſt be chiefly in order for exportation; for by the 7 *G.* *ſt.* 1. *c.* 7. it is enacted, that no perſon ſhall uſe or wear in any apparel, any printed, painted, ſtained, or dyed callico; on pain of 5 *l.* to the informer, on conviction on the oath of one witneſs before one juſtice; who ſhall, on information on oath in ſix days after the offence, ſummon the party, and upon his appearance or contempt examine the matter, and on proof by confeſſion or oath of one witneſs determine the ſame, and on conviction cauſe the penalty to be levied by diſtreſs and ſale, rendring Obſervation as to callicoes.

the overplus (charges of diſtreſs and ſale being firſt deducted): Provided that perſons aggrieved may appeal to the next quarter ſeſſions, giving ſix days notice. *ſ.* 1.

And if any perſon ſhall offer the ſame to ſale, or any houſhold furniture made up of, or mixed therewith, unleſs for exportation; he ſhall forfeit 20*l.* half to the informer, and half to the poor of the pariſh or place where the offence ſhall be committed, to be recovered in the courts at *Weſtminſter*, with full coſts, on proſecution in ſix months; and if he is a ſteward or other officer of a corporation, he ſhall alſo forfeit his office. *ſ.* 2, 4.

And no perſon ſhall uſe the ſame in any houſhold furniture, on like pain of 20*l.* *ſ.* 3.

But this ſhall not extend to callicoes made up in houſhold furniture before *Dec.* 25. 1722. *ſ.* 6.

Nor to callicoes dyed all blue. *ſ.* 11.

Nor to prohibit wearing, or uſing in houſhold furniture, any ſtuff made of cotton, or mixed therewith, printed or painted; or any callico chequered or ſtriped; or any callico ſtitched or flowered in foreign parts with any colour (muſlins, neckcloths, and fuſtians excepted). *ſ.* 10.

Houſes to be entered.

4. Every ſuch printer, painter, ſtainer, or dyer, ſhall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 30*l.* 10 *An. c.* 19. *ſ.* 71.

And by the 1 *G. ſt.* 2. *c.* 36. Where any perſon ſhall take upon him, to print, paint, ſtain, or dye any ſilks, linens, or ſtuffs at any other place than the place of his uſual reſidence or exerciſe of his trade; he ſhall firſt make entry with the officer of the diviſion, where he intends to do the ſame, and pay down the duties, on pain of 50*l.* and alſo the ſaid goods ſhall be ſeized and forfeited. *ſ.* 21.

Officer to enter and take account.

5. The officers ſhall at all times by day or night, and if by night in preſence of a conſtable, be permitted on requeſt to enter ſuch perſon's houſe, workhouſe, drying place, warehouſe, field, or other place uſed by him, and take an account, and ſhall make thereof a report in writing to the commiſſioners or to whom they ſhall appoint, leaving a copy if demanded, under his hand; and if he ſhall make default in leaving ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.), he ſhall forfeit 40*s.* 10 *An. c.* 19. *ſ.* 75.

Obſtructing the officer.

6. And none of the ſaid perſons ſhall obſtruct the officer in execution of his duty; on pain of 20*l.* 10 *An. c.* 19. *ſ.* 78.

Entry of goods made.

7. Every ſuch printer, and other perſon, ſhall once in ſix weeks make entry in writing at the next office, on oath before the collector or ſupervifor, of all ſuch goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50*l.* 10 *An. c.* 19. *ſ.* 72.

But no perſon ſhall be obliged to go to make entry, further than the next market town. 10 *An. c.* 19. *ſ.* 73.

Officer may charge for goods miſſing.

8. If the officer ſhall miſs any quantity of the ſaid goods, whereof he had taken an account at his laſt ſurvey, and ſhall not

on reasonable demand receive satisfaction what is become of the same; the officer may charge such person with the duties of the goods so missing, as if they were printed, painted, stained, or dyed. 10 *An. c.* 19. *s.* 77.

9. And if they shall conceal any the said goods, to avoid the duty; they shall forfeit 20*l.* And all the silks, callicoes, linens, and stuffs found in any private workhouse, or other place whereof no notice hath been given, or the value thereof, shall be forfeited. 10 *An. c.* 19. *s.* 82. Goods concealed.

10. They shall, within six weeks after entry, clear off the duties; on pain of forfeiting double: and if they shall deliver out any such goods, after default in payment of the duties, before the same shall be cleared off, they shall forfeit double value of the goods. 10 *An. c.* 19. *s.* 74. Payment of the duties.

11. And they shall not remove any the said goods, till the officer hath taken account thereof, and until each piece be stamped or marked; on pain of 20*l.* And the same so carried away without being marked, and found in the possession of any draper or other person for his use, for sale, may be seized, or the value thereof recovered. 10 *An. c.* 19. *s.* 79. Removing before stamped.

12. And they shall keep the goods which have not been surveyed, separate from the goods which have been surveyed; on pain of 5*l.* 10 *An. c.* 19. *s.* 81. Goods surveyed to be kept separate.

13. And on oath by any credible person, that he hath reason to suspect, that any the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale, unstamped; the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day time to search for the same, and to open doors, chests, trunks, and package, and to seize such goods, and bring them to the next office. 10 *An. c.* 19. *s.* 98. Search for goods unstamped.

14. And if any the said goods shall be found in any place, on land or water (except on shipboard for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged; the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 50*l.* 5 *G. c.* 11. *s.* 15. Goods found unstamped may be seized.

15. And if any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy. 10 *An. c.* 19. *s.* 97. Counterfeiting the stamps.

And if any person shall knowingly sell any the said goods with a counterfeit stamp, he shall forfeit 100*l.* and be set in the pillory in some publick place two hours. *id.*

16. The said goods having paid the duty, may be exported; and there shall be a drawback of the duties. 10 *An. c.* 19. *s.* 94, 95, 96. 12 *An. st.* 2. *c.* 9. *s.* 15. Exportation.

17. The penalties (except as is abovementioned in relation to callicoes) may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and shall be employed half to the use of the king, and half to him that shall discover, inform, or sue. 10 *An. c.* 19. *s.* 92. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

Utenſils liable.

18. And all the utenſils and inſtruments for printing, painting, ſtaining, or dying ſuch goods, in cuſtody of any the ſaid perſons, or any other to his uſe, ſhall be liable to all arrears of the duty, and to all penalties concerning the ſame, in like manner as if ſuch perſon were the lawful owner. 10 *An. c.* 19. *ſ.* 83.

IX. Malt.

No malt to be imported.

1. By the 12 *An. ſt.* 1. *c.* 2. No malt ſhall be imported, on pain of forfeiting the ſame, and the value thereof. *ſ.* 26.

And by the yearly acts, if it is brought in from *Scotland* by ſea, it ſhall be entred at the port of landing, and pay the like duty as *Engliſh* malt, unleſs a certificate is produced that it hath paid the duty of 3 *d.* a buſhel in *Scotland*, and then it ſhall only pay 3 *d.* more, to make it equal with the *Engliſh*; and if it is brought by land, it ſhall be carried thro' *Berwick* or *Carliſle*, and there pay in like manner; on pain of forfeiting the ſame or the value thereof; and if it is carried beyond *Berwick* or *Carliſle*, without entry or payment, the officers of exciſe may ſeize the ſame. 28 G. 2. *c.* 2. *ſ.* 7.

Duty on malt.

2. By the 12 *An. ſt.* 1. *c.* 2. (which is continued yearly) there ſhall be paid by the maker for all malt made in *England* (except it be made for exportation only, 12 G. *c.* 4. *ſ.* 48.) a duty of 6 *d.* a buſhel. *ſ.* 1.

What ſhall be deemed a buſhel.

3. And every round buſhel with a plain bottom, 18 ½ inches wide throughout, and eight inches deep, ſhall be deemed a legal *Wincheſter* buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 7.

Officers for theſe duties.

4. The ſaid duty ſhall be under the management of the commiſſioners and officers of exciſe 12 *An. ſt.* 1. *c.* 2. *ſ* 3.

Places of making to be entred.

5. No perſon making malt (other than compounders) ſhall ſet up, alter, or uſe any ciſtern, uting fat, utenſil, or other veſſel, for the wetting or ſteeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without firſt giving notice in writing at the next office of exciſe; or ſhall keep or uſe any private ciſtern or other veſſel for the wetting his barley or corn, other than ſuch as are known and made uſe of in his common malting houſe, on pain of 50 *l.* 12 *An. ſt.* 1. *c.* 2. *ſ.* 36.

Officer to enter and ſurvey.

6. The officer ſhall in the day time be permitted, on requeſt, to enter the houſe, malt houſe, and all other places belonging to or uſed by any maker of malt *(either for ſale or not for ſale)*; and to gage all ciſterns, uting fats, and other veſſels uſed for wetting or ſteeping corn, and take account of the quantity; and ſhall thereof make return to the commiſſioners, or whom they ſhall appoint, leaving a copy with ſuch maltſter; and if any ſuch maltſter ſhall refuſe to permit ſuch officer, he ſhall forfeit 20 *l.* 12 *An. ſt.* 1. *c.* 2. *ſ.* 4.

Or if he ſhall refuſe or neglect (after demand in writing, 12 G. *c.* 28. *ſ.* 30.) to leave a copy of the gage for the maker, at the time of taking the gage; he ſhall forfeit 40 *s.* *ſ.* 31.

And by another clauſe in the ſaid act, the officer ſhall on requeſt be permitted, by night or by day, but if in the night then in preſence

fence of a conſtable, to enter the houſe, malt houſe, and other place belonging to or made uſe of by any maker of malt *for ſale*, common brewer, innkeeper, victualler, diſtiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted; and if ſuch maker ſhall refuſe to permit him, he ſhall forfeit 20 *l.* *ſ.* 34.

7. And by a general clauſe in the 1 *G.* *ſt.* 2. *c.* 2. If any maker of malt for ſale, ſhall obſtruct any officer of exciſe, in the execution of any of the powers given him for ſecuring the ſaid duties, he ſhall forfeit 10 *l.* *ſ.* 4. Obſtructing the officer.

8. The officers ſhall meaſure corn making into malt, by the gage only, and not by the buſhel. 12 *An.* *ſt.* 1. *c.* 2. *ſ.* 17. Manner of gaging.

9. No perſon ſhall make any barley malt (except in *June*, *July*, and *Auguſt*) but that the ſame ſhall have in making thereof, that is, in the fat, floor, ſteeping, and drying three weeks at leaſt; nor in *June*, *July*, and *Auguſt*, but that it ſhall have 17 days at the leaſt (unleſs it be for his own houſe): on pain of forfeiting for every quarter 2 *s.* half to the king, and half to him that ſhall ſue: And the juſtices in ſeſſions, and the ſteward in the leet, may hear and determine the ſame, as well by preſentment of 12 men, as by accuſation or information of two honeſt witneſſes. 2 & 3 *Ed.* 6. *c.* 10. *ſ.* 2, 3, 4, 5. Time for making.

10. If any perſon ſhall put to ſale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of duſt or more; he ſhall forfeit for every quarter 20 *d.* half to the king, and half to him that ſhall ſue in like manner in the ſeſſions or leet. 2 & 3 *Ed.* 6. *c.* 10. *ſ.* 3, 4. Dreſſing of malt.

11. No perſon (except it be for his own houſe) ſhall mingle any malt, not well made, or made of mow-burnt, or ſpired barley, with other good malt, and after put the ſame to ſale; on pain to forfeit for every quarter 2 *s.* half to the king, and half to him that ſhall ſue in like manner in the ſeſſions or leet. 2 & 3 *Ed.* 6. *c.* 10. *ſ.* 3, 4, 5. Mixing bad malt with good.

And the bailiffs and conſtables of the town where malt ſhall be made, or put to ſale, may ſearch the ſame: and if they ſhall find it to be evil made, or mingled with evil malt, they ſhall with the advice of one juſtice cauſe it to be ſold to ſuch perſons, and at ſuch reaſonable prices, and under the common price of the market, as to him ſhall ſeem neceſſary and expedient. *ſ.* 4.

12. If any maltſter (other than compounders) ſhall force together in the ciſtern, uting fat, or couch, any corn ſteeped, in order to the making into malt; he ſhall forfeit 2 *s.* a buſhel. 12 *An.* *ſt.* 1. *c.* 2. *ſ.* 18. 6 *G.* *c.* 21. *ſ.* 8. Preſſing malt in the ciſtern.

13. No maker of malt (other than compounders) ſhall mix corn of one wetting with corn of a former wetting; or mix any of his couches or floors, with corn of a former wetting, before the ſame is put on the kiln for drying: on pain of 5 *s.* a buſhel. 2 *G.* 2. *c.* 1. *ſ.* 11. Mixing with corn of a former wetting.

14. If any dealer in malt ſhall, with malt, fraudulently mix any unmalted corn, or ſell or expoſe to ſale any ſuch mixture, or Mixing malt with unmalted corn.

ſhall attempt to ſhip off any ſuch mixture in order to export the ſame; he ſhall forfeit 5*s.* a buſhel. 1 *G. ſt.* 2. *c.* 2. *ſ.* 13.

Concealing malt to avoid the duty.

15. If any maker of malt ſhall fraudulently conceal any malt from the view of the gager; he ſhall forfeit 10*s.* a buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 35.

Allowance for malt ſwelling.

16. Out of every 20 buſhels charged by the gager, there ſhall be an allowance made of malt charged in the uting fat, ciſtern, or other veſſel, wherein the ſame ſhall be found wetting or ſteeping, or on the floor within 30 hours after the ſame ſhall be thrown out of ſuch veſſel,——of four buſhels, for the difference between the quantity when it is wet and ſwoln, and when it is converted into dry malt. 12 *An. ſt.* 1. *c.* 2. *ſ.* 20.

And if any corn that hath been ſteeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not anſwer ſo great a quantity from the floor as from the ciſtern; out of every 20 buſhels ſo charged upon the floor, there ſhall be allowed to the maker of the malt which ſhall be gaged upon the floor, after it hath been thrown out of the ciſtern 30 hours or more, and before it ſhall be dryed, ten buſhels, for the difference between the quantity when it is making upon the floor, and when it is dried. 12 *An. ſt.* 1. *c.* 2. *ſ.* 28.

Entry of malt made.

17. The maltſter ſhall monthly make entry at the office of exciſe, of all the malt made (either for ſale or not for ſale) in ſuch month; on pain of 10*l.* 12 *An. ſt.* 1. *c.* 2. *ſ.* 4.

Payment of the duty.

18. And he ſhall, within four months after entry, pay off the duties, on pain of forfeiting double; and after ſuch default, he ſhall not ſell or carry out any malt until the duty is paid, on pain of double value. 12 *An. ſt.* 1. *c.* 2. *ſ.* 6. 1 *G. ſt.* 2. *c.* 2. *ſ.* 8.

Drawback of the duty for malt damaged.

19. After the duty is paid, if any quantity ſhall be damaged by the ſinking of the veſſel in which the malt ſhall be tranſported from one part of the kingdom to another; the juſtices ſhall at the next ſeſſions, on proof of ſuch damage and of the payment of the duty, ſettle the quantity of the damage, and the allowance to be made in reſpect thereof, and give a certificate of the ſum allowed, which ſhall bear the ſame proportion to the whole duty, as the damage ſhall bear to the value of the malt: on producing of which certificate, the officer ſhall repay or allow to the proprietor the ſum certified. 12 *An. ſt.* 1. *c.* 2. *ſ.* 14.

But where ſuch loſs ſhall happen, the perſon who ſhall ſuſtain the ſame, ſhall three days before the next ſeſſions, leave notice thereof in writing with the collector of the diſtrict where the loſs ſhall happen, and of his intention of applying to the ſaid ſeſſions. *ſ.* 15.

Drawback for malt periſhed.

20. After the duty is paid, if any malt ſhall be deſtroyed by fire, by burning of the place where it is kept; or periſh by water, by caſting away of the veſſel in which it is tranſported: the owner may make proof thereof by two witneſſes on oath, and of his having paid the duty, at the next quarter ſeſſions where ſuch accident ſhall happen; who ſhall grant a certificate of ſuch loſs, on producing of which, the duty ſhall be repaid. 12 *An. ſt.* 1. *c.* 2. *ſ.* 27.

Compounding.

21. The commiſſioners, or ſuch perſons as they ſhall appoint, and in default of ſuch appointment the collector and ſupervisor for

for the division, may compound for the duties of malt made to be consumed in private families, at 5*s.* a head by the year; and the houses of such persons compounding shall not be liable to the duty, or to the survey of the officers. 12 *An. st.* 1. *c.* 2. *s.* 11.

But if any such person shall sell or deliver out any malt, or shall permit any other person to make malt in his house, or shall sell any malt liquor, or shall have more persons in his family than he compounds for, without giving notice of them to the officer of excise at the next quarter day; he shall forfeit 5 *l.* and lose the benefit of his composition, and for every bushel of malt so fraudulently sold or made, he shall forfeit 20*s.* *s.* 12.

Exportation.

22. No malt entred and made for exportation only, shall be liable to the duties; and no drawback shall be allowed for any malt exported. 12 *G. c.* 4. *s.* 48.

But the maker shall be allowed, in consideration of his extraordinary charge and trouble, 3 *d.* for every quarter made for exportation. *s.* 59.

And by the 28 *G.* 2. *c.* 2. There shall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters of malt, and no more, on exportation, tho' by steeping it shall run out into any greater quantity. *s.* 10.

And the maker, before he shall begin to wet or steep any steeping of corn to be made into malt for exportation, shall leave notice in writing with the officer, of the quantity of corn intended to be contained in each steeping, on pain of 50 *l.* and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5*s.* a bushel. 12 *G. c.* 4. *s.* 49, 58.

And no maker of malt shall begin to wet corn to make into malt for exportation, above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption, above six days before all the corn on his floors for exportation be dried and locked up, on pain of 5*s.* a bushel. *s.* 50.

And the maker shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, until it hath been measured in presence of the officer; on pain of 50 *l.* 3 *G.* 2. *c.* 7. *s.* 16.

And the officers, during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its operations, as in case the duties were to be charged thereon. 12 *G. c.* 4. *s.* 52.

And persons opposing the officers in the execution of this act, shall forfeit 50 *l.* 12 *G. c.* 4. *s.* 58.

And the said maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that he may attend the measuring; and after it has been measured, it shall (on pain of 50 *l.*) be immediately carried on shipboard, or else into storehouses, to be provided by such maker, to be there kept apart from all other

malt, under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the ſame be delivered out for exportation. 12 *G. c.* 4. *ſ.* 51, 58. 3 *G.* 2. *c.* 7. *ſ.* 17.

And if he, or any perſon with his privity, ſhall open ſuch lock, or make other entrance into the place, or carry any of it away, without conſent of the officer, or notice given to him; he ſhall forfeit 100*l.* 3 *G.* 2. *c.* 7. *ſ.* 18.

And when any maker or proprietor ſhall be deſirous to take away any of the malt for exportation, and ſhall thereof give notice in writing to the officer 40 hours before the time he ſhall deſire to take out the ſame, expreſſing in ſuch notice the quantity of the malt, and the port to which it is to be removed; the officer ſhall attend at the place where the malt is locked up, and ſee it meaſured and delivered out. 12 *G. c.* 4. *ſ.* 53.

And the officer ſhall keep an account of the malt ſo delivered out, and of the perſon to whom it belongs, and ſhall give ſuch perſon a certificate to the officer of the diviſion to which it is intended to be removed, who ſhall file the ſame, and make an entry thereof; and if the proprietor ſhall neglect to deliver ſuch certificate, he ſhall forfeit 50*l.* 12 *G. c.* 4. *ſ.* 54.

And perſons intending to ſhip malt for exportation, ſhall give at leaſt 48 hours notice before they begin to put it on board, to the officer of the port in writing, of the hour when ſuch ſhipping is intended to be begun, and the name of the ſhip; on pain of 5*s.* a buſhel. 12 *G. c.* 4. *ſ.* 57.

And during the ſhipping, at all ſuch times as the proprietor ſhall not be actually ſhipping merchandizes, the hatches of the ſhips ſhall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches ſhall be ſo kept locked, from the time the ſhips ſhall be loaded till they be ready to ſail. 12 *G. c.* 4. *ſ.* 56.

And perſons breaking open the hatches of any ſhip ſo locked up, ſhall forfeit 50*l.* 12 *G. c.* 4. *ſ.* 58.

And the officers may not only attend the meaſuring of ſuch malt, but continue on board the ſhips till they be cleared of their ports. 12 *G. c.* 4. *ſ.* 55.

And if it ſhall be relanded after ſhipping for exportation, beſides the penalty of the bond which ſhall be given for its exportation, the ſame ſhall be forfeited, and treble the value. 28 *G.* 2. *c.* 2. *ſ.* 12.

And the maker who ſhall uſe any ſuch ſtorehouſe for keeping of malt for exportation, ſhall every nine months after the laſt clearing, clear out the ſame, on pain of 50*l.* 3 *G.* 2. *c.* 7. *ſ.* 20. Or 5*s.* a buſhel: 12 *G. c.* 4. *ſ.* 57. And by the 28 *G.* 2. *c.* 2. he ſhall clear out in 15 months, on pain of 50*l.* *ſ.* 16, 27.

And if any unmalted oats or barley be found mixed among malt ſhipped for exportation, the perſon ſhipping the ſame ſhall forfeit 5*s.* a buſhel. 6 *G. c.* 21. *ſ.* 4.

And

And if ground malt ſhall be exported, it ſhall be computed at ſo many buſhels as it contained before it was ground. 12 *An. ſt.* 1. *c.* 2. *ſ.* 30.

23. The penalties relating to this article (except where it is otherwiſe above directed) ſhall be ſued for, levied, and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and be employed half to the uſe of the king, and half to him that ſhall ſue. 12 *An. ſt.* 1. *c.* 2. *ſ.* 9. 24 G. 2. *c.* 40. *ſ.* 33. Power of the juſtices.

24. Perſons aggrieved by any judgment of the juſtices, may appeal to the next quarter ſeſſions, giving ſix days notice in writing; but if there be not ſix days between the order of the juſtices and the ſeſſions, the appeal may be at the ſecond ſeſſions. 12 *An. ſt.* 1. *c.* 2. *ſ.* 37, 38. 1 G. 2. *ſt.* 2. *c.* 16. *ſ.* 3. Appeal.

And the ſeſſions may award coſts to either party, to be levied by warrant of the juſtices or two of them, on the goods of the party. 12 *An. ſt.* 1. *c.* 2. *ſ.* 38.

25. And no *certiorari* ſhall be allowed, to ſet aſide any order of the juſtices. 12 *An. ſt.* 1. *c.* 2. *ſ.* 37. Certiorari.

26. And all malt in cuſtody of the maker, ſhall be liable to the duties and penalties, in the ſame manner as if he were the lawful owner. 12 *An. ſt.* 1. *c.* 2. *ſ.* 10. Malt liable to the duties and penalties.

Note; The Statute of the 12 *An. ſt.* 1. *c.* 2. which is the foundation of all the annual acts relating to the duties on malt, is omitted in its proper place in Mr. *Hawkins*'s edition of the ſtatutes; as are alſo divers other clauſes, which are here inſerted out of ſeveral of the other yearly malt acts: which ſeemeth to indicate that the learned editors had not thoroughly conſidered this article; ſuppoſing perhaps, that as the duties do expire annually, ſo every clauſe in the ſaid acts relating thereunto did expire likewiſe: But they have rectified this omiſſion in part, by inſerting the ſaid act of the 12 *Ann.* in the appendix, Vol. 6.

X. Paper.

1. By the 10 *An. c.* 19. and 12 *An. ſt.* 2. *c.* 9. (which are in part altered and explained by the 12 *An. c.* 19. and 11 *G. c.* 7.) certain duties are impoſed on paper imported; which ſhall be under the management of the commiſſioners of the cuſtoms. Duty on paper imported.

But old rags, old ropes, or junks, or old fiſhing nets may be imported duty free. 11 *G. c.* 7. *ſ.* 10.

2. And by the ſaid acts of 10 *An. c.* 19. and 12 *An. ſt.* 2. *c.* 9. certain duties are laid on all paper made, and alſo on all paper painted in *Great Britain*, as followeth: Duty on paper made in Great Britain.

	s.	*d.*
For every ream (at 20 quires of 24 ſheets each to the ream) of demy fine	2	3
Demy ſecond	1	6
Crown fine	1	6
Crown ſecond	1	1½
Fool's cap fine	1	6
Fool's cap ſecond	1	1½

	s.	*d.*
Fine pots	1	6
Second pots	0	9
Brown large cap	0	9
Small ordinary brown	0	6

Whited brown 9*d.* a bundle, each bundle containing 40 quires.

Pasteboards, mildboards, and scaleboards, 3*s.* a hundred weight.

All other paper not particularly charged, after the rate of 18*l.* for every 100*l.* value.

Painted paper (beside the duty paid for the paper before painting) 1½*d.* a yard square.

But pasteboard made of paper that hath paid the duty, shall not be charged with further duty.

And books printed at *Oxford* or *Cambridge*, in *Latin*, *Greek*, *Oriental*, or northern languages, shall have a drawback of the duty on paper.

The said paper paying *ad valorem* shall be computed as it shall be worth to be sold at the next market town, by the oath of the maker or his chief workman, according to his knowledge and belief, to be taken before the collector or supervisor.

Officers of the duties on paper.

3. The commissioners of the treasury shall appoint commissioners of these duties; and they shall substitute inferior officers. 10 *An. c.* 19. *s.* 41.

Places of making to be entred.

4. The maker or painter shall give notice in writing at the next office, of his name and place of abode, and where he intends to make the same; on pain that if he makes any before such notice, he shall forfeit 30*l.* 10 *An. c.* 19. *s.* 43.

And no person shall use any place for drying the same, or making it fit for use, other than such common place whereof he hath given notice; on pain of 20*l.* *s.* 44.

And all paper, materials, and utensils found in any private workhouse or other place, for which no entry hath been made or notice given, shall be forfeited. *s.* 54.

Officer to enter and take account.

5. The officer shall by day or night, and if in the night in presence of a constable, be permitted on request to enter into the house, mill, yard, drying house, warehouse, or other place, and take an account, and make report thereof to the commissioners or whom they shall appoint, and leave a copy (if demanded) of such report under his hand with the maker; and if he shall not leave such copy (after demand in writing, 12 *G. c.* 28. *s.* 30.) he shall forfeit 40*s.* 10 *An. c.* 19. *s.* 48.

And he shall be permitted to take an account of the quantity of rags, cordage, and other materials, and of all paper in the possession of any painter or stainer, and of their proceedings in making, or in painting or staining it. 10 *An. c.* 19. *s.* 50.

Mark on paper before painting.

6. And before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and if the officer shall miss any quantity whereof he had so taken an account, and shall not on reasonable demand receive satisfaction what is become of it, he may charge the duties for it. 1 *G. st.* 2. *c.* 36. *s.* 17.

7. And

7. And if any perſon ſhall obſtruct any officer, in the execution of his duty, he ſhall forfeit 20*l.* 10 *An. c.* 19. *ſ.* 50. Obſtructing the officer.

8. No maker ſhall remove any paper of which no account hath been taken, without giving two days notice to the officer; on pain of 20*l.* 10 *An. c.* 19. *ſ.* 51. Removing before account taken.

And no perſon ſhall remove any ſuch painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel ſhall be marked or ſtamped; on pain of 20*l.* 1 *G. ſt.* 2. *c.* 36. *ſ.* 18.

9. And the maker or ſtainer concealing any paper or materials, ſhall forfeit 20*l.* 10 *An. c.* 19. *ſ.* 53. Concealing from the officer.

10. And the maker and ſtainer ſhall keep ſeparate the paper which is unſurveyed, for 48 hours after making or ſtaining, unleſs it ſhall be ſooner ſurveyed by the officer; on pain of 50*l.* 10 *An. c.* 19. *ſ.* 52. Paper unſurveyed to be kept ſeparate.

11. The maker or painter ſhall once in ſix weeks make entry on oath at the next office, of all paper made by him fit for uſe, with the kinds and quantities; on pain of 50*l.* 10 *An. c.* 19. *ſ.* 45. Entry of paper made.

But no perſon ſhall be obliged to go to make entry, farther than the next market town. *ſ.* 46.

12. And the duty ſhall be cleared off in ſix weeks after entry, on pain of double duty; and after default in payment, no perſon ſhall ſell or deliver any out, till the duty is cleared off, on pain of double value of ſuch paper ſold or delivered out. 10 *An. c.* 19. *ſ.* 47. Payment of the duty.

13. Paper that hath paid the duty may be exported, and the duties ſhall be drawn back. 10 *An. c.* 19. *ſ.* 57, 58, 59. Exportation.

But there ſhall be no drawback allowed on foreign paper exported. 10 *G.* 2. *c.* 27.

14. All the exciſe laws ſhall be in force for managing theſe duties; and the penalties ſhall be ſued for, levied, mitigated, and diſpoſed of, as by the laws of exciſe. 10 *An. c.* 19. *ſ.* 60, 61. 24 *G.* 2. *c.* 40. *ſ.* 33. Power of the juſtices.

15. And all paper, materials, and utenſils, in cuſtody of the maker or ſtainer, or of any to his uſe, or in truſt for him, ſhall be liable to all duties in arrear, and to all forfeitures relating to the ſaid duties, in the ſame manner as if the offender or debtor were the lawful owner. 10 *An. c.* 19. *ſ.* 55. Paper and utenſils liable to diſtreſs.

For the ſtamp duties on paper, ſee title **Stamps.**

XI. Plate.

1. By the 4 *W. c.* 5. and 6 *G. c.* 11. Additional duties are laid on plate imported, over and above what it is charged in the book of rates: which ſhall be under the management of the commiſſioners of the cuſtoms. Duty on plate imported.

2. By the 6 *G. c.* 11. For all ſilver plate made in *Great Britain*, a duty of 6 *d.* an ounce ſhall be paid by the maker. *ſ.* 4. Duty on plate made in Great Britain.

But manufactures of ſilver, under three penny weights (except handles, hafts, ſpoons, thimbles, buckles, claſps, or buttons) ſhall not be chargeable with the duty. 7 *G. ſt.* 1. *c.* 20. *ſ.* 34.

3. And

Officers for these duties.

3. And the commissioners of the treasury shall appoint commissioners for the management of these duties; who shall substitute inferior officers. 6 *G. c.* 11. *s.* 6.

Assayers.

4. Moreover, to prevent frauds in the true making of plate, it is enacted by the 12 & 13 *W. c.* 4. and 1 *An. st.* 1. *c.* 9. that (besides the city of *London*) *York*, *Exeter*, *Bristol*, *Chester*, *Norwich*, and *Newcastle upon Tyne* shall be appointed for the assaying and marking of plate.

And the goldsmiths, silversmiths, and plateworkers in the said places, shall be incorporated into a company, and chuse wardens yearly. 12 & 13 *W. c.* 4. *s.* 2.

And an assayer shall be elected by the company in each of the said places, who shall be sworn by the mayor. *s.* 4, 5.

Maker to be entred with the wardens of the company.

4. And every goldsmith, silversmith, and plateworker, within the said places, and elsewhere, shall before he takes upon him to exercise the said trade, enter his name, and mark, and place of abode, with the wardens of the company where an assayer is; and if he shall not make such entry, or shall strike any other mark but what is so entred, he shall forfeit double value, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13 *W. c.* 4. *s.* 7.

Places of working to be entred.

6. Also they shall give notice in writing at the next office for the duties abovementioned, of their names and places of abode, and where they intend to work; on pain of 20 *l.* 6 *G. c.* 11. *s.* 7.

And all plate, and other manufactures of silver, which shall be found in any private workhouse, and all private utensils for making the same, of which no notice hath been given, shall be forfeited, or the value thereof. 6 *G. c.* 11. *s.* 16.

Officers to enter and take account.

7. The officers for the said duties shall, in the day time, be permitted on request, to enter the workhouse, and take an account of the weight, and shall thereof make return in writing to the commissioners or whom they shall appoint, leaving a copy thereof (if demanded) with the maker; and if any officer shall refuse (after demand in writing, 12 *G. c.* 28. *s.* 30.) to leave such copy, he shall forfeit 40 *s.* 6 *G. c.* 11. *s.* 10.

Obstructing the officer.

8. And if any maker or worker shall obstruct any such officer, in the execution of his duty; he shall forfeit 20 *l.* 6 *G. c.* 11. *s.* 12.

Maker to keep scales and weights.

9. And the maker shall keep scales and weights at the place of working, and permit and assist the officer to make use thereof; on pain of 10 *l.* 6 *G. c.* 11. *s.* 11.

Removing before surveyed.

10. And no maker (on pain of 40 *l.*) shall remove any such plate by him made, of which no account shall have been taken by the officer, without giving him 24 hours notice. 6 *G. c.* 11. *s.* 13.

Concealing.

11. And if the maker shall conceal any plate, to avoid the duties; he shall forfeit 20 *l.* 6 *G. c.* 11. *s.* 15.

Plate not surveyed to be kept separate.

12. And the plate not surveyed shall be kept separate from that which shall have been surveyed, for 24 hours after making; unless

leſs it ſhall have been ſooner ſurveyed by the officer; on pain of 10*l.* 6 *G.* *c.* 11. *ſ.* 14.

13. And the makers ſhall once a month make entry in writing upon oath, at the next office for the ſaid duties, of all the ſilver plate by them wrought within ſuch month, containing the weight and kinds, and how much was made in each week; on pain of 100*l.* 6 *G.* *c.* 11. *ſ.* 8. Entry of plate made.

14. And they ſhall clear off the duty in ſix weeks after ſuch entry; on pain of double duty. 6 *G.* *c.* 11. *ſ.* 9. Payment of the duty.

15. And every goldſmith, ſilverſmith, and plateworker, inhabiting where there is not an aſſayer, ſhall firſt fix his mark, and then ſend it to an aſſayer; and if it be found by the aſſayer to be of the fineneſs of the ſtandard, then he ſhall mark it, and have 6*d.* a pound for his trouble: And if any ſuch perſon ſhall make any plate (leſs in fineneſs than the ſtandard, or put any to ſale (except what by reaſon of its ſmallneſs is not capable of the touch) before it ſhall be aſſayed and marked; he ſhall forfeit the ſame, half to the king, and half to him that ſhall ſue in any court of record in the county or place where the offence ſhall be committed. 12 & 13 *W.* *c.* 4. *ſ.* 9. Aſſaying.

16. And as to the fineneſs thereof by the ſtandard, it is enacted by the 6 *G.* *c.* 11. that plate may be made, either according to the old ſtandard (of 11 ounces and 2 pennyweights fine ſilver in every pound troy); or according to the new ſtandard (of 11 ounces and 10 pennyweights): but differently marked. *ſ.* 41. Fineneſs by the ſtandard.

17. That is to ſay, plate of 11 ounces and 2 pennyweights, ſhall be marked with the maker's mark, *viz.* the firſt letters of his chriſtian and ſurname; the mark of the goldſmith's company in *London*, *viz.* the leopard's head, lion paſſant, and a diſtinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be uſed by the aſſayers at *York*, *Briſtol*, *Cheſter*, *Norwich*, or *Newcaſtle upon Tyne*:) Mark.

And plate of 11 ounces and 10 pennyweights ſhall be marked with the maker's mark, *viz.* the firſt letters of his chriſtian and ſurname; and the mark of the ſaid company, *viz.* a lion's head eraſed, the figure of a woman called *Britannia*, and the ſaid mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the ſaid cities or towns). 12 *G.* 2. *c.* 26. *ſ.* 5.

18. And to prevent frauds in the duties abovementioned, the maker ſhall ſend with every parcel to the aſſay office, a note in writing, containing the day and year, his chriſtian and ſurname, and place of his abode, the ſeveral kinds of ſuch plate, and the number of each kind, and the weight; which ſhall be entred in a book by the officer of the company, and afterwards filed; and the ſame, or copies thereof, ſhall be delivered by the officer upon oath monthly into the exciſe office; and the commiſſioners ſhall monthly, or oftner if they think fit, appoint inſpectors to examine the books. 12 *G.* 2. *c.* 26. *ſ.* 9. Account between the aſſay and exciſe offices.

19. So

Exportation.

19. So much wrought plate shall be exported yearly as shall be allowed by the commissioners of the customs, or three of them. 9 & 10 *W.* *c.* 28. *s.* 1.

And the duties shall be drawn back. 6 *G.* *c.* 11. *s.* 18.

But no drawback shall be allowed for plate above seven years old. 12 *G.* 2. *c.* 26. *s.* 10.

Power of the justices.

20. All the powers of the excise laws shall be in force for managing these duties; and the forfeitures (not otherwise herein directed) shall be sued for, levied, or mitigated as by any law of excise, or in the courts at *Westminster*, and be disposed half to the use of the king, and half to him who shall sue. 6 *G.* *c.* 11. *s.* 19, 20. 24 *G.* 2. *c.* 40. *s.* 33.

Utensils liable.

21. And all the plate, materials, and utensils in the custody of the maker, or of any person to his use, shall be liable to the duties in arrear, and to the penalties; and such proceedings may be had thereupon, as if such maker were the lawful owner. 6 *G.* *c.* 11. *s.* 17.

For other regulations concerning plate, not relating to these duties, the reader may consult the statutes at large mentioned under this head; and especially the 12 *G.* 2. *c.* 26.

XII. Salt.

Officers for the salt duties.

1. The duties upon salt shall be under the management of the commissioners of excise. 5 *W.* *c.* 7. *s.* 5.

Or particular commissioners may be appointed; in which case they shall have the same powers as commissioners of the excise. 1 *An.* *st.* 1. *c.* 21. *s.* 26.

And all collectors and other officers for ascertaining, collecting, or receiving the duty, shall be appointed under the hands and seals of the said commissioners. 5 *W.* *c.* 7. *s.* 5.

And no person shall act as chief commissioner until he shall before a baron of the exchequer take the oaths of allegiance, supremacy, and abjuration; and the oath following:

You shall swear to execute your office, truly and faithfully without favour or affection, and shall from time to time account make and deliver to such person and persons as his majesty shall appoint to receive the same; and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint on that behalf: So help you god. 5 W. c. 7. s. 14.

And no person shall be capable of any office relating to the said duties (other than that of chief commissioner), until he shall before two commissioners, or two justices of the peace where he shall be appointed officer, take the said oaths of allegiance, supremacy, and abjuration, and the said last mentioned oath *mutatis mutandis*. 5 *W.* *c.* 7. *s.* 15.

British salt imported.

2. By the 2 & 3 *An.* *c.* 14. No salt of the produce of *Great Britain*, or the *Isle of Man*, shall be imported or landed in *England*;

land; on pain that the ſame ſhall be forfeited, and alſo the ſhip and tackle; and every perſon aſſiſting therein ſhall forfeit 20 *l.* or be impriſoned ſix months. *ſ.* 1. (And by the 5 *G. c.* 18. *ſ.* 23. this is extended to ſalt ſhipped for exportation, and put on ſhore again, or taken out of the veſſel.)

And the ſalt officers may at any time within two months, ſeize the ſalt, ſhip, and tackle; and if the owner ſhall not in 20 days claim the ſame, and give ſecurity to anſwer the value, they ſhall be ſold. *ſ.* 2.

But this ſhall not extend to ſalt ſhipped to be carried coaſtwiſe by certificate. *ſ.* 3.

Alſo, where ſalt entred for exportation, ſhall be forced into any port by weather, enemies, or other neceſſity, the owner or maſter may within 20 days reland the ſalt, ſo as entry be made, and the drawback repaid. *ſ.* 4.

Alſo, where a ſhip ſhall come in from *Ireland*, or any other foreign part, having any ſalt on board, which was taken in only for proviſion of the ſhip; the maſter may land the ſame, ſo as entry be made in ten days, and the duty paid or ſecured as for foreign ſalt imported. *id. ſ.* 6. But if he ſhall not enter and pay, or ſecure the duty in ten days, and before it be landed, the ſame ſhall be forfeited; and the maſter, owner, or importer, ſhall forfeit double value. 5 *G. c.* 18. *ſ.* 18.

3. By the 5 *W. c.* 7. There ſhall be paid for every gallon of foreign ſalt imported, 3 *d.* over and above other duties. *ſ.* 3. Foreign ſalt imported.

And by the 9 & 10 *W. c.* 44. an additional duty is laid, of 7 *d.* a gallon. *ſ.* 3. The ſame amounting in the whole to 6 *s.* 8 *d.* a buſhel. 8 *G. c.* 4.

The gallon to be rated after 8 gallons to the buſhel *Winchester* meaſure. 5 *W. c.* 7. *ſ.* 18.

And 84 *lb.* weight of foreign ſalt ſhall be deemed a buſhel. 1 *An. ſt.* 1. *c.* 21. *ſ.* 6

Which ſaid duties ſhall be paid by the importer, on entry, and before landing; yet, on giving ſecurity to the collector, he ſhall have ſix months time for payment: But if he pay ready money, he ſhall have after the rate of 10 *l. per centum per annum* abated. 9 & 10 *W. c.* 44. *ſ.* 6.

And by the 5 *An. c.* 29. If the ſalt imported amounts in the whole to more than 40 buſhels, a further time is allowed for payment of the duties: In order to which, the ſalt ſhall on landing be weighed, cellared, and locked up in the preſence of a ſalt officer, under the cuſtody of the merchant or importer (who is to be at the charge of the cellarage or ſtorehouſe); and the merchant or importer may in preſence of a ſalt officer, and by warrant or permit under his hand and ſeal, have what quantity thereof his occaſions may require, not under 40 buſhels at a time; giving ſecurity for the duty of what quantity he receives, payable in ſix months: and if he ſhall pay ready money, he ſhall have after the rate of 10 *l. per cent. per annum* abated. *ſ.* 1, 3.

But if ſuch foreign ſalt imported, ſhall not on landing be ſecured as aforeſaid, it ſhall be liable to payment of duties, and to ſuch penalties for not paying or ſecuring the ſame, as if this act

had not been made; and no ſalt ſo cellared and locked up ſhall be removed without notice firſt given to the officer, and without a warrant or permit for conveying it; on pain of forfeiting ſuch ſalt, and 10 *s.* a buſhel, and alſo 20 *l.* to be recovered of the importer; and the carrier or perſon removing it, ſhall be alſo liable to the penalty of 10 *s.* a buſhel, and 20 *l.* for every offence. *ſ.* 2.

And no foreign ſalt ſhall be imported in any ſhip or veſſel of leſs burden than 40 tuns, and in bulk only (except for the neceſſary proviſions of the ſhips); on pain of forfeiting the ſalt and double value thereof, to be recovered of the importer. 3 *G.* 2. *c.* 20. *ſ.* 18.

Landing ſalt before payment of the duty.

4. And if any ſalt be landed before entry made with the ſalt officer, or before the duty paid, or without a warrant for landing the ſame ſigned by the ſalt officer; it ſhall be forfeited, or the value, and alſo 10 *s.* a buſhel. 9 & 10 *W.* *c.* 44. *ſ.* 6. And moreover, every perſon aſſiſting therein, ſhall forfeit 100 *l.* 5 *G.* *c.* 18. *ſ.* 24.

Search on ſhipboard.

5. And any officer of the ſalt duties, or cuſtoms, may go on board any veſſel, to ſearch if there be any ſalt on board, and may ſeize the ſame if it be found in any other veſſel than that wherein it was brought into port, unleſs it had been entred, or the duty paid; and all ſuch ſalt ſhall be forfeited, or the value thereof, to be recovered of the maſter or owner of the veſſel, who ſhall alſo be liable to all other penalties as if the ſame had been landed without entry or payment of duties: and every perſon obſtructing ſuch officer, ſhall forfeit 40 *l.* 5 *G.* *c.* 18. *ſ.* 22.

Ships hovering near the coaſt.

6. And where any veſſel, laden with ſalt, ſhall be found hovering on the coaſts, the officers of the cuſtoms or ſalt duties may go on board and compel them to come into port, and may continue on board, till the ſalt ſhall be unladen, or the ſhip depart on her voyage: And if the perſons on board ſuch ſhip, or any other veſſel importing ſalt, ſhall neglect or refuſe to enter, or to unlade ſuch ſalt, for 20 days after it is come into port, or within that time to depart on their voyage, unleſs permitted by the chief officer of the cuſtoms to ſtay longer; in ſuch caſe all the ſalt on board ſhall be forfeited, and double value thereof, to be recovered of the maſter or commander of the veſſel. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 7.

Duty on home ſalt.

7. By the 5 *W.* *c.* 7. a duty is laid on home ſalt of 1 ½ *d.* a gallon. *ſ.* 3.

Which by the 7 & 8 *W.* *c.* 31. is explained to extend to all ſalt made from rock ſalt, ſalt refined, or ſalt made from ſalt. *ſ.* 43.

And by the 9 & 10 *W.* *c.* 44. a further duty is impoſed on all ſuch ſalt, of 3 ½ *d.* a gallon. *ſ.* 5. The ſame amounting in the whole to 3 *s.* 4 *d.* a buſhel.

Note; By the 3 *G.* 2. *c.* 20. Theſe duties were repealed, but were revived by the 5 *G.* 2. *c.* 6. for three years, and ſo from time to time continued, and at laſt by the 26 *G.* 2. *c.* 3. made perpetual.

And by the 9 *An.* *c.* 23. A further duty of 9 *s.* a ton, is laid on all rock ſalt exported to *Ireland*. *ſ.* 44.

And

And rock ſalt ſhall be aſcertained as to payment of the duties, at 65 pounds weight to the buſhel. 1 *An. ſt.* 1. *c.* 21. *ſ.* 9.

All other ſalt at 56 pounds to the buſhel. 9 & 10 *W. c.* 44. *ſ.* 34.

Drawback on rock ſalt refined.

8. Where any rock ſalt for which the duties ſhall have been paid or ſecured, ſhall be melted and refined; the perſon who ſhall refine it into white ſalt, ſhall have an abatement out of the duty of the ſaid white ſalt, of ſo much as was charged on the ſaid rock ſo melted and refined; ſo as the rock ſo refined were before the melting thereof weighed in preſence of the officer; and ſo as oath be firſt made before a juſtice near adjoining, of the particular quantity of rock ſalt by ſuch refiner employed in making the ſaid white ſalt, and that he or any other perſon by his privity did not increaſe the ſaid rock ſalt by mixing or other undue practice, and that no former allowance for the ſaid rock ſalt had been made to his uſe; and ſo as due proof be made upon oath or otherwiſe, that the duties for the ſaid rock ſalt ſo refined were paid or ſecured. 10 & 11 *W. c.* 22. *ſ.* 6.

And no rock ſalt ſhall be refined or made into white ſalt in any place except within ten miles of the pit, or at ſuch places as were uſed for refining rock ſalt before *May* 10, 1702. on pain of 40*s.* a buſhel. 1 *An. ſt.* 1. *c.* 21. *ſ.* 10.

Entry of ſalt works and pits.

9. Every maker of ſalt, refiner of rock ſalt, and proprietor of any ſalt works or pits, who ſhall ſet up or uſe any ſalt work, ſalt pit, ſalt pan, ſtorehouſe, warehouſe, or other place, for the making, laying, refining, or keeping of ſalt or rock ſalt, without giving notice thereof at the next ſalt office; ſhall forfeit 40*l.* 1 *An. ſt.* 1. *c.* 21. *ſ.* 1.

Officer to enter and ſurvey.

10. And if any ſalt maker, importer of ſalt, or refiner or proprietor of rock ſalt, ſhall on requeſt or demand made, in the day time, or in the night in preſence of a conſtable, refuſe to permit the officer to enter and come into his works, warehouſe, ſtorehouſe, or other place for making, laying, refining, or keeping of ſalt; he ſhall forfeit 40*l.* 1 *An. ſt.* 1. *c.* 21. *ſ.* 2.

Obſtructing the officer.

11. And, generally, if any perſon ſhall obſtruct any officer in the execution of his office, or of the powers given him by any law relating to the ſalt duties; he ſhall forfeit 20*l.* and for non-payment, and in default of diſtreſs, he may be committed to the houſe of correction, to be whipt and kept to hard labour for any time not exceeding one month. 1 *An. ſt.* 1. *c.* 21. *ſ.* 4.

Removing ſalt without notice.

12. No ſalt ſhall be delivered from any ſalt works or pits, without notice firſt given to the officer; on pain of forfeiture of the ſalt ſo delivered, and of 20*l.* by the owner of the works or pits. 5 *W. c.* 7. *ſ.* 19.

And by the 9 & 10 *W. c.* 44. No ſalt ſhall be delivered from any ſalt works or pits, without notice given to the officer; on pain of the owner forfeiting the ſame, and 10*s.* a buſhel. *ſ.* 26.

Scales and weights.

13. The collector ſhall provide at every ſalt work or pit, a ſufficient beam, ſcales, and weights, or ſtilyard, and ſhall have liberty to fix the ſame, for weighing the ſalt that ſhall be delivered from thence; and one or more perſons living near, ſhall be admitted and ſworn to the true weighing of ſuch ſalt, before one juſtice near

near adjoining, without fee; and he shall be paid by the collector or officer for the duties. 7 & 8 *W.* *c.* 31. *s.* 46.

Weighing.

14. Every owner of any rock pit, who shall take any rock salt out of such pit, shall before the removal thereof, cause the same to be weighed in the presence of the salt officer, who shall attend at all reasonable hours in the day time to see it weighed, and take an account and make return thereof in writing under his hand to the commissioners of excise, or whom they shall appoint, leaving a true copy under his hand with the proprietor: and if the proprietor refuse to weigh it in presence of the officer when taken out of the pit, or suffer any rock salt to be removed from the pit before it hath been weighed; he shall forfeit 20*l.* and double value. 10 & 11 *W.* *c.* 22. *s.* 3.

Entry of salt made.

15. All makers and proprietors of salt shall make entries with the salt officers of the quantity by them made and delivered, or imported; and shall have a warrant under the hand and seal of an officer, impowering them to carry away the same, before it shall be removed, which warrant the officer shall give on paying or securing the duties (in nine months, 5 *An.* *c.* 29. *s.* 5.): But if any person at the time of entry shall pay ready money, he shall have after the rate of ten *per centum per annum* allowed. 5 *W.* *c.* 7. *s.* 6.

Payment of the duties.

16. And the proprietor of rock pits shall clear off the duties of all rock salt, in two days after the charge made by the officer, or within the said two days give security to pay the same (in twelve months, 5 *An.* *c.* 29. *s.* 5.); on pain of double value of the duties: But if he shall pay within the two days, he shall be allowed after the rate of 10*l.* *per centum per annum*, for the said twelve months. 10 & 11 *W.* *c.* 22. *s.* 4, 5.

Discount on payment.

17. And persons giving security for payment of the duties, may at any time within 28 days after giving the same, pay the duty, and shall have a discount after 10*l.* *per centum per annum* for the remainder of the time. 1 *An.* *st.* 1. *c.* 21. *s.* 29.

How far rock salt may be removed, with the duty unpaid.

18. But the owners of rock salt, may remove it out of the pits, or warehouses adjoining or belonging to such pits, into their other warehouses or places for storing thereof, for convenience of selling or shipping, after entry made, and a warrant taken for the same from the next officer; and shall not be obliged to pay or secure the duty on such removal, 5 *W.* *c.* 7. *s.* 22.

Salt carried without a permit.

19. The officers may seize all salt carried before entry, without a permit, and the same shall be brought to the next office; and if it shall not be claimed by the owner or one deputed under his hand, in ten days, it shall be forfeited and sold the next general day of sale: And if it be claimed in ten days, and the claimer doth not make it appear by the oath of one witness that it had been duly entred, and a warrant obtained for removing it, it shall likewise be forfeited: And every person who shall carry or cause it to be carried before such entry and warrant, shall forfeit double the value. 5 *W.* *c.* 7. *s.* 7. And also 10*s.* a bushel. 9 & 10 *W.* *c.* 44. *s.* 12.

And by the 1 *An.* *st.* 1. *c.* 21. If any salt carrier, or other person, shall remove any salt from any salt works, or place thereunto belonging,

belonging, without entry and payment of the duties or securing the same, or without a permit; the officers may not only seize the salt, but also apprehend the offender, and if he shall not on conviction pay the penalties, and no sufficient distress can be found, he may be committed to the house of correction to be whipt and kept to hard labour for any time not exceeding one month. *s.* 4.

And by the 2 & 3 *An. c.* 14. The carrier, who shall carry any salt without a permit, shall forfeit 20 *l. s.* 8.

Salt found unentred.

20. And every person in whose possession any salt shall be found, near the salt works or sea coasts, which hath not been entred, and the duty paid or secured; shall if it be foreign salt, be liable to such penalties as if he had landed the same without entry or payment of duties; and if it be *English* salt, he shall be liable to such penalties, as if he had removed it from the salt works without entry or payment of duties, and without a permit; unless he shall make it appear, that he bought it of a maker, retailer, or importer of salt, and of whom. 1 *An. st.* 1. *c.* 21. *s.* 3.

Several permits to be delivered with several parcels.

21. The salt officer shall deliver *gratis* and without delay, so many several permits to each carrier of salt, as he shall demand for such several horse loads of salt as he shall load at one time, and at one salt work. 7 & 8 *W. c.* 31. *s.* 47.

Prices of salt.

22. The lord mayor and aldermen in *London*, and the justices of the peace in the country at their general sessions, may set and publish in writing the prices of salt, and alter the same as there shall be occasion: and persons refusing to sell at such price, or selling at a higher price, shall forfeit 5 *l.* half to the king, and half to the informer, by distress, by warrant of the lord mayor or any such justice; and in default of sufficient distress, to be imprisoned till paid. 7 & 8 *W. c.* 31. *s.* 92.

Salt to be sold by weight.

23. By the 9 & 10 *W. c.* 6. No person dealing in salt, shall *sell* it otherwise than by weight, after the rate of 56 pounds to the bushel; on pain of 5 *l.* to the informer; to be determined by two justices residing near: And the party grieved may appeal to the next sessions. And the said justices shall on complaint summon the party accused, and on appearance or contempt examine the matter, and on proof by the oath of two witnesses, or confession, give judgment, and shall issue their warrant to levy the same by distress, and cause sale thereof to be made, if not redeemed in six days, rendring the overplus, and for want of sufficient distress, shall imprison the offender till satisfaction is made.

And no person shall *buy* salt otherwise than by weight, and not by measure; on pain of 10*s.* a bushel, and so proportionably. 1 *An. st.* 1. *c.* 21. *s.* 28.

Carrying coastwise.

24. No retailer or shopkeeper shall ship any salt to be sent to any port within the kingdom, before he hath made it appear by oath or otherwise, before the commissioners or a salt officer, that the duty is paid or secured, or that it was bought of some other retailer or shopkeeper that hath paid the duty. 5 *W. c.* 7. *s.* 8.

And all salt to be put on shipboard, shall be weighed at the place where taken on board; and none shall be carried on board before it is weighed, and a permit containing the quantity is obtained; on pain of forfeiture, and 10*s.* a bushel: But if the officer shall

not attend to weigh it, or refuse to give a permit, it may be carried on board without incurring any penalty. 10 & 11 *W.* c. 22. *s.* 10, 11.

And where any salt shall be laid on shipboard, the officer of the customs where it shall be laden, shall in the cocquet (which cocquet shall be also signed by the salt officer) express the quantity: And if such ship shall come into any port, the officers of the customs or of the salt duties, may go on board and demand a sight of the cocquet, and if any such officer shall have just cause to suspect, that there is not so much salt on board as the quantity expressed in the cocquet, and shall make affidavit thereof, before the collector or customer of the port, or person executing either of their offices; he may weigh all the salt on board; and if there shall not be so much as the cocquet expresseth (making allowance for waste) the salt remaining shall be forfeited. 1 *An. st.* 1. c. 21. *s.* 13.

And persons shipping salt to be carried coastwise, the duties for which have been paid or secured, shall have an allowance for waste after the rate of three bushels for every 40 bushels of white salt, and after the rate of a bushel and an half for every 40 bushels of rock salt; which allowance shall be made but once for the same salt, altho' it be carried from several ports coastwise. 5 *An.* c. 29. *s.* 4. 6 *An.* c. 12. *s.* 1.

And every commander of any vessel that shall carry salt from one port to another within the kingdom, shall (before he hath a warrant for landing it) deliver to the salt officers in the port of landing, a true particular of the quantity, signed by the salt and customhouse officers of the port from whence he came; and then the master, mate, or boatswain, shall make oath before some of the commissioners or their officers, that to his knowledge there hath not been laid on board any salt since he came from such port. And if the vessel be to deliver one part of the salt at one port, and another part at another port, then the officers for the salt and customs, where part of the salt shall be delivered, shall certify on the back of the warrant, or by certificate alone, under their hands and seals, how much of the salt hath been there landed; on pain of forfeiting double the value of the salt that shall be otherwise delivered. 5 *W.* c. 7. *s.* 9. And likewise 10*s.* a bushel. 9 & 10 *W.* c. 44. *s.* 12.

And the officer at the unlading port may go on board the ship, and demand a sight of the permit, and weigh the salt upon unlading; and if it be more in weight than is contained in the permit, the surplusage shall be forfeited. And if the master of the ship shall refuse to shew the permit, the officer may seize and detain the salt till it be produced. And if he do not produce it in four days after seizure, the salt shall be forfeited. 10 & 11 *W.* c. 22. *s.* 12, 13.

On reshipping any salt from any boat, barge, or other vessel, and before any dispatches be granted for the salt so reshipped, the master, mate, or chief boatman, shall make oath before the salt officer, that all the salt taken in at the place of lading is reshipped on board such vessel, and that no salt hath been added to it or taken from it, to the best of his knowledge and belief; on pain of

of forfeiting double the value of the ſalt that ſhall be otherwiſe reſhipped, and likewiſe 10*s.* a buſhel. 5 *G. c.* 18. *ſ.* 25.

And where any ſubject hath ſhipped ſalt that hath paid duty, in order to be conveyed to ſome part of *England*, and any of it is loſt at ſea (or in any port, harbour, or river, 8 *G. c.* 4. *ſ.* 11.) by ſtorm, or being thrown overboard for preſerving mens lives or the veſſel (or by ſinking of the ſhip, or be taken by enemies, 9 & 10 *W. c.* 44. 2 & 3 *An. c.* 14.); in ſuch caſe, the merchant or owner of the ſalt ſhall, on proof made by the oaths of two witneſſes, whereof the maſter or mate ſhall be one, at the quarter ſeſſions where he ſhall inhabit, of the loſs of ſuch ſalt, and that the ſame was not occaſioned by any leakage of the ſhip, or any negligence or default of the maſter or mariners, receive from the ſaid ſeſſions a certificate that ſuch proof was made before them; and on producing the certificate to the ſalt officer he ſhall let him buy the like quantity duty free. 2 & 3 *An. c.* 14. *ſ.* 18. Which certificate ſhall alſo vacate the ſecurity given for payment of the duties. 26 *G.* 2. *c.* 32. *ſ.* 6.

25. When any ſalt ſhall be entred to be put on board, and the duty paid or ſecured; the officer ſhall, on due notice, by himſelf, or deputy, between ſun riſing and ſetting, attend the weighing it out, without loſs of time; on pain of 40*s.* 9 & 10 *W. c.* 6. *ſ.* 3. Exportation.

And the ſalt officers may go aboard all ſhips exporting ſalt, and continue, and take an account thereof; and if any perſon ſhall obſtruct any ſuch officer, he ſhall forfeit 20*l.* 1 *An. ſt.* 1. *c.* 21. *ſ.* 15.

And there ſhall be a drawback of the duties on ſalt exported. 5 *W. c.* 7 *ſ* 11. 10 & 11 *W. c.* 22. *ſ.* 7. 5 *An. c.* 29. *ſ.* 16.

Moreover there ſhall be an allowance of 4 buſhels for every 40 buſhels of white ſalt, and of two for every 40 buſhels of rock ſalt, exported to *Ireland*; for the waſte in carriage. 5 *An. c.* 29. *ſ.* 14.

And if any ſalt, for which the duty hath been repaid on exportation, ſhall be landed again before the duty be again paid, and entry made, and other things performed, as in caſe of foreign ſalt imported; the offender ſhall forfeit double value, and 10*s.* a buſhel, and the other penalties for foreign ſalt landed unentred. 9 & 10 *W. c.* 44. *ſ.* 27. 5 *W. c.* 7. *ſ.* 20.

And if any ſhip laden with ſalt exported, ſhall by ſtreſs of weather or otherwiſe be drove into any port, the ſalt officer may come on board, and continue till the ſhip ſhall unlade her cargo, or return to ſea; on pain of 20*l.* to be recovered of the maſter who ſhall refuſe the officer to come or continue on board. And if any part of the ſalt ſhall be put on ſhore, without entry or repayment of the duty; the ſaid ſalt, and alſo the whole cargo of ſalt in the ſhip, ſhall be forfeited. 1 *An. ſt.* 1. *c.* 21. *ſ.* 12.

And where any ſalt, for which the duties ſhall have been paid or ſecured, ſhall be ſhipped in order to be exported, and the ſame ſhall periſh by ſinking of the ſhip in the port, before the exporter ſhall be intitled to a drawback; the exporter or proprietor ſhall on proof made at the next ſeſſions, to be held next to the place where it ſhall ſo periſh, of the loſs of ſuch ſalt, receive from the

ſaid ſeſſions a certificate, that ſuch proof was made before them; and on producing the certificate to the collector of the ſalt duties, he ſhall let ſuch perſon buy the like quantity duty free. 2 & 3 *An.* *c.* 14. *ſ.* 10.

And where any ſalt ſhall be ſhipped in order for exportation to *Ireland*, and it ſhall periſh by ſinking of the ſhip, or be taken by enemies; the exporter or proprietor ſhall on proof made at the quarter ſeſſions for the place from whence it was exported, of the loſs of ſuch ſalt, receive from the ſaid ſeſſions a certificate, that ſuch proof was made before them; and on producing the certificate to the officer of the place where the duty hath been paid or ſecured, the ſecurity ſhall be diſcharged, and the money repaid. 4 *An.* *c.* 12. *ſ.* 11. 9 *An.* *c.* 23. *ſ.* 46. Proof to be made in two years. 26 *G.* 2. *c.* 32. *ſ.* 7.

Salt for uring of ſh.

26. The curers of fiſh for exportation may import foreign ſalt, or take from the pit or work *Britiſh* ſalt (or rock ſalt refined, 8 *G.* *c.* 16. *ſ.* 6.) for curing fiſh for exportation, without duty, except the cuſtoms on importation; ſuch foreign ſalt being landed, and ſuch *Britiſh* ſalt being taken from the pits or works, and weighed, in the preſence of an officer, and being lodged in a warehouſe, under a lock both of the officer and proprietor; which ſhall remain there during the ſeveral intervals of the fiſhing ſeaſon. 5 *G.* *c.* 18. *ſ.* 1.

And any perſon who ſhall imbezil any foreign ſalt after importation, and before cellaring, ſhall forfeit 20 *s.* a buſhel; and any perſon who ſhall imbezil any *Britiſh* ſalt, after weighing at the pits or works, and before cellaring, ſhall forfeit 10 *s.* a buſhel. 5 *G.* *c.* 18. *ſ.* 4.

The proprietor ſhall enter at the next office the quantity ſo by him lodged; and the officer ſhall keep an account of the quantity in his cuſtody. 5 *G.* *c.* 18. *ſ.* 1.

And at the beginning of the fiſhing ſeaſon, the proprietor or his agent ſhall make oath in writing before an officer at the next office, declaring the quantity ſo lodged, and that it is all intended for curing of fiſh for exportation only, and ſhall not by his conſent be delivered but for the ſaid purpoſe: after which oath ſo made and filed, the officer in whoſe cuſtody the ſalt hath continued during the interval of the fiſhing ſeaſon, ſhall deliver all the ſaid ſalt into the ſole cuſtody of the proprietor. 5 *G.* *c.* 18. *ſ.* 1.

And in the caſe of herrings to be cured for exportation, it is enacted by the 8 *G.* *c.* 4. and 8 *G.* *c.* 16. that the proprietor of ſuch ſalt delivered duty free, or his agent, ſhall inſtead of the ſaid oath, make oath in writing at the next ſalt office, declaring the quantity of the foreign or *Britiſh* ſalt reſpectively lodged for curing of fiſh, and that it is intended for the curing of fiſh for exportation only, and ſhall not by his conſent be delivered but for that purpoſe, except ſo much thereof as ſhall be uſed for curing ſuch red or white herrings as ſhall be entered for home conſumption, and charged with the duties by the ſaid acts reſpectively chargeable thereupon.

And no foreign ſalt ſhall be delivered over from the joint cuſtody of the officer and proprietor, into the ſole cuſtody of the proprietor or his agent, for curing fiſh for exportation; except he give ſecurity to the ſatisfaction of the chief officer of the ſalt duty in the port, that he will account for the foreign ſalt ſo by him received, or anſwer the penalties. 8 *G.* 2. *c.* 12. *ſ.* 3.

And for every buſhel of ſalt ſo lodged, which ſhall be either carried away, or found wanting at the redelivering thereof into the ſole cuſtody of the proprietor, reaſonable allowance for waſte being firſt made; the proprietor ſhall forfeit 20*s.* 5 *G.* *c.* 18. *ſ.* 3.

And at the end of every fiſhing ſeaſon, the officer ſhall take an account of the quantity remaining in hand which ſhall be locked up as aforeſaid: and the proprietor ſhall (within three months after the expiration of each year, 8 *G.* *c.* 4. *ſ.* 10.) deliver an account in writing into the office, containing the quantity of fiſh exported or entered for exportation, on which the ſalt hath been uſed; together with a certificate from the officer where it is ſhipped for exportation, verifying the account; which account ſhall be alſo affirmed by the oath of the proprietor or his agent, and remain in the office; and if any of the ſalt ſhall be delivered over to any other perſon, and uſed by him in curing of fiſh, that alſo ſhall be expreſſed in the account, and ſuch perſon ſhall in like manner make another account of all the ſalt uſed by him: And if any ſuch perſon ſhall neglect or refuſe to deliver ſuch account within the ſaid time; he ſhall forfeit 40*l.* 5 *G.* *c.* 18. *ſ.* 1.

And if the proprietor of ſuch ſalt ſo delivered over, ſhall not make it appear by oath or otherwiſe to the proper officer, that ſuch ſalt ſo delivered over was uſed for curing of fiſh; he ſhall be deemed guilty of imbezilling it, and forfeit 50*l.* 11 *G.* *c.* 30. *ſ.* 41.

Alſo the ſaid account ſhall expreſs the quantity of red or white herrings entred for home conſumption, on which ſuch ſalt hath been uſed. 8 *G.* *c.* 4. *ſ.* 3. 8 *G.* *c.* 16. *ſ.* 3.

And for every buſhel of ſalt, ſo taken out of the cellar or ſalt works, which ſhall not be ſo accounted for by ſuch oath and certificate; or by certificate from the quarter ſeſſions, that proof was there made, that ſuch ſalt was put on board for curing fiſh at ſea, and was there taken by enemies, or otherwiſe loſt at ſea; or ſhall not be returned into, or found remaining in the cellar or warehouſe: the owner or other perſon ſtanding accountable for the ſame, ſhall forfeit 20*s.* And the proprietor or his agent ſelling, giving away, uſing, or delivering any ſuch ſalt otherwiſe than for the purpoſes aforeſaid; ſhall forfeit 20*s.* a buſhel: And every perſon buying or receiving the ſame, ſhall forfeit alſo 20*s.* a buſhel: And in default of payment in 14 days after conviction, and where no ſufficient effects can be found to anſwer the ſame, he ſhall be ſent to the houſe of correction, to be whipped and kept to hard labour, not exceeding three months. 5 *G.* *c.* 18. *ſ.* 2.

For every caſk of pilchards or ſcads exported, containing 50 gallons, ſhall be paid by the ſalt officer an allowance of 7*s.* for every hundred of codfiſh, ling, or hake (except dried ones called haberdines) of 14 inches long, from the bone in the fin to the

third joint in the tail, 5 *s.* for every barrel of wet codfish, ling, or hake, of 32 gallons, 2 *s.* for every hundred weight of haberdines, &c. for every barrel of salmon of 42 gallons, 4 *s.* 6 *d.* for every barrel of white herrings 2 *s.* 8 *d.* for every barrel of full red herrings 1 *s.* 9 *d.* for every barrel of clean shotten red herrings 1 *s.* for every last of dried red sprats 1 *s.* And the officers shall cut off part of the tail of the codfish, ling, and hake; and mark the casks of the other fish; that it may be known that they have once had the allowance. 5 *G. c.* 18. *s.* 6.

And the maker or curer of red herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 1 *s.* 8 *d.* a thousand. And if they be packed up in casks, the number shall be marked on the head; and a permit shall be given by the salt officer, expressing the number, and the mark and number of the casks, and for what place they are intended, and whether to be sent by land or water; on pain of forfeiting all the red herrings removed otherwise, and also 40 *s.* a thousand. 8 *G. c.* 4. *s.* 2. And as the duties on salt shall rise or fall, the 1 *s.* 8 *d.* a thousand shall rise and fall proportionably. *s.* 5.

And the maker or curer of white herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 3 *s.* 4 *d.* a barrel; and the cask shall be marked on the head, shewing the contents: then a permit shall be given by the salt officer, expressing the quantity, and mark and number of the casks, and for what place they are intended, and whether to be sent by land or water; on pain of forfeiting all the white herrings removed otherwise, with the casks, and also 40 *s.* a cask. 8 *G. c.* 16. *s.* 2.

And the officers at all times in the day, or in the night in presence of a constable, may enter into the cellars and warehouses, and inspect the curing of the fish, and gage the salt, and mark the casks, and see them exported; and if any person shall obstruct them, he shall forfeit 20 *l.* 5 *G. c.* 18. *s.* 7.

No herrings, pilchards, scads, codfish, ling, hake, salmon, or dried red sprats, shall after they be put on board any boat or vessel, in order to be exported, be taken out thereof, otherwise than to put the fish into the ships in which they are to be exported, nor put on shore but in presence of a salt officer; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein, shall forfeit 20 *l.* or be imprisoned six months. 5 *G. c.* 18. *s.* 23. 2 & 3 *An. c.* 14. *s.* 13.

If the said fish shall not be exported, for want of an opportunity, while they are good and merchantable; the owner may cause them to be destroyed in the presence of an officer: and the officer's certificate that they were destroyed, shall be admitted to verify the account. 8 *G. c.* 4. *s.* 4.

No person shall cure or pack pilchards for sale, unless he be owner or part owner of a seyn or drift net, or have the consent of such owner in writing, and that on each cask or hogshead the word *seyn* or *drift* shall be burnt with an iron, together with the name

name and ſurname of the owner, and the number of pilchards; on pain of double value. 1 *An. ſt.* 1. *c.* 21. *ſ.* 31.

27. For every barrel of ſalted beef or pork exported for ſale, there ſhall be allowed 5 *s.* a barrel; to be paid by the ſalt officer in 30 days after demand, on a debenture to be prepared by the collector of the cuſtoms, and verified by the ſearcher as to the quantity, and that it is good and merchantable: and the oath of the exporter or agent ſhall be firſt taken before the principal officers of the port, that it was ſalted with ſalt for which the duties have been paid and not drawn back, and that it is really exported for ſale, and that no part thereof was ſpent nor intended to be ſpent for the ſhip's uſe, and not intended to be relanded; and the ſalt officers, on exportation of beef or pork, may mark the barrel or veſſel, that it may be known to have been exported. 5 *An.* *c.* 29. *ſ.* 8. Salt for curing of beef and pork.

And if any ſuch beef or pork ſhall be relanded, it ſhall be forfeited, and alſo 40 *s.* a barrel; to be recovered of the importer or proprietor. *ſ.* 9.

28. No perſon ſhall uſe any brine before it is boiled into ſalt, or any rock ſalt before it is refined into white ſalt, for pickling or curing of fleſh or fiſh, or preſerving any proviſions; on pain of 40 *s.* for every gallon of brine, or pound of rock ſalt. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 5. Uſing brine or rock ſalt inſtead of ſalt.

And every perſon who ſhall carry any brine from the ſalt pits (other than the known proprietors of pans for boiling it into white ſalt) ſhall likewiſe forfeit 40 *s.* a gallon. 5 *G.* *c.* 18. *ſ.* 17.

29. All penalties and forfeitures given by any act relating to the duties upon ſalt (except where it is herein otherwiſe directed) ſhall be employed half to the uſe of the king, and half to him who ſhall ſeize or inform; to be recovered in ſuch manner, and with ſuch power of mitigation, as any forfeiture may be by any law of exciſe; or in the courts at *Weſtminſter*. And every ſuch officer may ſeize all ſalt and other things, which by any law relating to the duties on ſalt are declared to be forfeited. 5 *G.* *c.* 18. *ſ.* 26. 24 *G.* 2. *c.* 40. *ſ.* 33. Power of the juſtices.

30. And if any perſon is aggrieved by any order of two juſtices relating to the duties upon ſalt, or to any forfeiture or offence concerning the ſame; he may appeal to the next quarter ſeſſions. 10 & 11 *W.* *c.* 22. *ſ.* 9. Appeal.

31. But no dealer in ſalt ſhall act as a juſtice of the peace in any matter relating to the duties upon ſalt; and if there ſhall not be a ſufficient number of juſtices in any corporation, not dealers in ſalt, the juſtices of the county ſhall have power to act therein. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 18. Dealer in ſalt not to act as a juſtice.

XIII. Soap.

1. By the 10 *An.* *c.* 19. and 12 *An.* *ſt.* 2. *c.* 9. There ſhall be paid for all ſoap imported (over and above former duties) 3 *d.* a pound; which ſhall be under the management of the commiſſioners of the cuſtoms. Duty on ſoap imported.

Duty on ſoap made in the kingdom.

2. And by the ſaid acts, there ſhall be paid for all ſoap made within the kingdom, 1*d*. $\frac{1}{2}$ a pound.

Officers for the duties on ſoap.

3. And the commiſſioners of the treaſury ſhall appoint commiſſioners for the duty on ſoap made in the kingdom; who ſhall ſubſtitute inferior officers. 10 *An*. *c*. 19. *ſ*. 5.

Place of making to be entred.

4. And no maker of ſoap ſhall ſet up, alter, or uſe any boiling houſe, workhouſe, warehouſe, ſtorehouſe, ſhop, room, or other place for the making or keeping of ſoap, or for the boiling or keeping any oil, tallow, pot aſh, lime, or other materials proper to be made into ſoap; or uſe any copper, kettle, furnace, fat, ciſtern, trough, or other veſſel for the boiling or making of ſoap, without firſt giving notice thereof in writing, at the next office for the ſaid duties; on pain of 50*l*. 10 *An*. *c*. 19. *ſ*. 6.

And all ſoap, oil, tallow, and other materials, which ſhall be found in any private boiling houſe, workhouſe, warehouſe, or other place, and all private coppers, kettles, furnaces, troughs, and other veſſels, for which no entry ſhall be made, or notice given, ſhall be forfeited, or the value thereof. 10 *An*. *c*. 19. *ſ*. 19.

Officer to enter and ſurvey.

5. The officer ſhall at all times, by day or night, and if in the night then in preſence of a conſtable, be permitted on requeſt to enter the houſe, boiling houſe, warehouſe, or other place, uſed by any maker of ſoap; and by gaging, weighing, or otherwiſe, take an account of the quantity, and thereof make return in writing to the commiſſioners or whom they ſhall appoint, leaving a true copy, if demanded, under his hand with the maker; and if he ſhall refuſe or neglect to leave ſuch copy (after demand in writing, 12 *G*. *c*. 28. *ſ*. 30.) he ſhall forfeit 40*s*. 10 *An*. *c*. 19. *ſ*. 12.

And if any maker ſhall obſtruct the officer, he ſhall forfeit 20*l*. *ſ*. 15.

Notice of the time of working.

6. Every maker of ſoap, before he begin any making, if within the bills of mortality, ſhall give 12 hours, if elſewhere, 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of 50*l*. 11 *G*. *c*. 30. *ſ*. 33.

And putting lees or lye into the copper or other utenſil, ſhall be deemed a beginning ſuch making, ſo as to ſubject him to the forfeiture. *ſ*. 34.

And if the making ſhall not begin in ſix hours after the time mentioned in the notice within the bills, and in 12 hours elſewhere; the notice ſhall be void. *ſ*. 35.

Reworking ſtale ſoap.

7. If any ſtale or rotten ſoap, or cuttings, be put into the copper or pan, in preſence of an officer, to be refreſhed or new made; the officer ſhall make allowance of the duty, and certify the ſame upon his report. 10 *Ann*. *c*. 19. *ſ*. 28.

But if it ſhall be put into any making of ſoap, without giving to the officer 12 hours notice in writing within the bills, and 24 hours elſewhere; there ſhall be no allowance made for it. 11 *G*. *c*. 30. *ſ*. 37.

And if any officer ſhall falſly pretend that he had ſuch notice when he had not, and make and certify ſuch allowance; he, and alſo the maker, ſhall forfeit 10*s*. for every pound ſo certified. *ſ*. 38.

8. And

8. And the maker shall keep scales and weights where he makes his soap, and permit and assist the officer to use them; on pain of 10*l.* 10 *An. c.* 19. *s.* 13. Scales and weights.

9. And the officer shall be permitted to take an account of the quantities of oil, tallow, pot-ashes, lime, and other materials proper to be made into soap, that shall be in the maker's possession; and if the officer shall miss any quantity of them, which he had taken account of the last time he was there, and shall not on reasonable demand receive satisfaction what is become of them, the officer may charge him with such quantity of soap, as such materials in his judgment would have made, not exceeding 14 gallons of such ingredients (besides the lees) for every barrel. 10 *An. c.* 19. *s.* 14. Officer to charge for materials missing.

10. And no maker shall (on pain of 20*l.*) remove any soap, of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the same. 10 *An. c.* 19. *s.* 16. Removing soap unsurveyed.

11. And the makers shall keep all the soap by them made, and not surveyed, separate from that which hath been surveyed, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner surveyed; on pain of 5*l.* 10 *An. c.* 19. *s.* 17. Unsurveyed to be kept separate.

12. And if any maker shall conceal any soap or materials; he shall forfeit the same, and also 500*l.* 1 *G. st.* 2. *c.* 36. *s.* 14, 15. Concealing.

And by the 23 *G.* 2. *c.* 21. If any officer of the excise shall have cause to suspect, that any soap is fraudulently concealed, if it is within the bills, then on oath made by such officer before two commissioners, or if it is elsewhere, then upon oath before any justice of the peace, setting forth the ground of his suspicion, they or he may impower such officer by day or night by special warrant (but if in the night, then in presence of a constable) to enter into the places suspected, and seize and carry away the same, as forfeited, together with the package; and if any person shall obstruct such officer, he shall forfeit 100*l.* *s.* 34.

13. The maker within the bills shall monthly, and elsewhere every six weeks, make entry in writing at the next office, of all the soap by him made within the said month or six weeks, setting forth the weight, and what quantity was made at each boiling in the several weeks; on pain of 50*l.* Which entries shall be on the oath of the maker, or chief workman, according to the best of his knowledge and belief. The said entry and oath within the bills, to be at the general office, and elsewhere with the collector and supervisor. 10 *An. c.* 19. *s.* 9. Entry of soap made.

But no maker shall be obliged to send further to make entry, than to the next market town. *s.* 10.

14. And the measure of soap shall be this; Every barrel shall contain 256 *lb. averdupois*; half barrel 128; firkin 64; half firkin 32; besides the weight or tare of the cask. And all soap (except hard cake soap, and ball soap, 10 *An. c.* 26. *s.* 111.) shall upon making thereof be put by the maker into such cask, and none other. 10 *An. c.* 19. *s.* 8. Measure of soap.

And

And all soft soap that shall be filled in any other cask less than barrels, half barrels, firkins, and half firkins, shall be forfeited, and also 5 *l.* 12 *An. st.* 2. *c.* 9. *s.* 19.

Payment of the duties.

15. The maker within the bills, shall within four weeks, and elsewhere within six weeks after entry, clear off the duties; on pain of double duty: And no maker, after such default in payment, shall sell or deliver out any soap, till he hath paid off his duty; on pain of double value. 10 *An. c.* 19. *s.* 11.

Drawback for soap used in the woollen manufacture.

16. Any person who shall use soap in making of cloths, or other manufactures of sheeps or lambs wool only, or manufactures, whereof the greatest part of the value of the materials shall be wool; or in finishing the said manufactures; or preparing the wool for the same; or in whitening of new linen in the piece, (or his chief workman) —— may make proof in writing by affidavit, before the collector or supervisor, specifying the kinds and quantity of the manufactures, and the days between which, and the places where the same were made, prepared, or whitened, and the quantity and kind of soap consumed therein, and that no allowance for the duty on such soap hath been made: whereupon the collector shall repay the duty on such soap. 12 *An. st.* 2. *c.* 9. *s.* 16.

And the said affidavit need not be stamped; and no fee shall be taken, except 4 *d.* for writing the affidavit, on pain of treble damages to the party grieved, with full costs; to be recovered as the other penalties. *s.* 17.

And any person making false affidavit, shall forfeit treble value of the allowance; and for the second offence (on conviction in the courts at *Westminster*) shall suffer as for wilful perjury. *s.* 18.

Soap carried coastwise.

17. Cocquets granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, the same shall be forfeited, and seized, together with the package. 23 *G.* 2. *c.* 21. *s.* 29.

Importation and exportation.

18. No soap shall be imported, otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50 *l.* 23 *G.* 2. *c.* 21. *s.* 27.

But on information brought against any such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner, in payment of the forfeiture. 26 *G.* 2. *c.* 32. *s.* 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 *G.* 2. *c.* 21. *s.* 28.

Soap that hath paid the duty may be exported; and the duties shall be drawn back. 10 *An. c.* 19. *s.* 22, 23, 24. But no drawback

back shall be allowed on the exportation of any foreign soap imported. 23 *G.* 2. *c.* 21. *s.* 36.

The officers of excise or customs may seize any soap with the package, that shall be found in any vessel, cart, or other carriage; where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported without payment of duty, or that the same has been exported and relanded after repayment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5 *l.* for every 100 pounds weight; and also the goods and package shall be forfeited. 23 *G.* 2. *c.* 21. *s.* 31.

And if any person shall knowingly harbour or conceal any soap unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 *l.* for every hundred weight, together with the goods and package. 23 *G.* 2. *c.* 21. *s.* 32.

And where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal, or be removed by *certiorari*. 23 *G.* 2. *c.* 21. *s.* 33.

19. The excise laws shall be in force for managing these duties; and the penalties (except where it is herein otherwise directed) shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall sue. 10 *An.* *c.* 19. *s.* 26. 11 *G.* *c.* 30. *s.* 39. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

20. And where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *s.* 35. Proof to lie on the claimer.

21. And if the party is not satisfied with any judgment of the justices on the act of 23 *G.* 2. *c.* 21. abovementioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized). *s.* 37. Appeal.

22. And on information on the said act of the 23 *G.* 2. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. *s.* 38. Mitigation.

23. And all soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 *An.* *c.* 19. *s.* 20. Utensils liable.

XIV. Spirituous

XIV. Spirituous liquors.

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods: see the first part of this title, concerning the **Customs in general.**

Duty on importation.

1. By the several acts an excise is laid on every gallon of spirituous liquors imported (over and above the customs) as follows; *viz.*

Single brandy, spirits, or *aqua vitæ*, 4*s.* 8*d.* Double brandy, spirits, or *aqua vitæ*, 8*s.* 8*d.*

Which shall be raised as the duties on other excisable liquors. 12 *C.* 2. *c.* 23. 12 *C.* 2. *c.* 24. 4 & 5 *W.* *c.* 3. 6 *W.* *c.* 20. 4 *An.* *c.* 6. 6 *G.* 2. *c.* 17.

Rum, in the whole, 4*s.* 1*d.*

Arrack from the *British* colonies in the *East Indies*, the same as for brandy and foreign spirits imported.

Landing without duty paid.

2. And if any person shall land any *French* brandy before the duty be paid or secured, or without licence from the proper officer so to do; he, and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value. 1 *An.* *st.* 2. *c.* 14.

And if any officer of the customs or excise shall connive thereat; he shall be incapable to hold any office in the revenue, and forfeit 500*l.* *f.* 2.

Excise officers may go on board.

3. And the officers of excise may go on board any ship or vessel, and search in like manner as the officers of the customs may do, for any excisable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package. 11 G. *c.* 30. *f.* 1.

Warrant to search.

4. And if any officer of the excise have cause to suspect, that any foreign spirits shall be fraudulently concealed in any place, entred or not entred, if it is within the bills of mortality, then on oath made before two commissioners, if elsewhere, before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion; he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels: and if any person shall obstruct such officer, he shall forfeit 100*l.* 11 *G.* *c.* 30. *f.* 2.

Who only may seize.

5. And by a general clause in the 8 *G.* *c.* 18. All brandy, arrack, rum, spirits, and strong waters, *British* or foreign, and all foreign excisable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or persons deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, and no other person. *f.* 24.

Obstructing the officer.

6. And if any person shall obstruct any officer of the customs or excise, in seizing or securing any of the said liquors, or endeavour

vour to reſcue them after ſeizure, or ſhall after ſeizure ſtave, or otherwiſe damage any caſk, or veſſel; he ſhall forfeit 40 *l.* 8 *G.* *c.* 18. *ſ.* 25.

7. But no perſon ſhall be intitled to any reward given on ſuch ſeizure, unleſs he give notice to the next officer of exciſe, or to the ſupervifor, in 48 hours; who ſhall, on ſuch notice, take an account of the ſpecies and quantity; nor ſhall ſuch goods be afterwards removed without a permit from ſuch officer of exciſe, on pain of being reſeized. 12 *G.* *c.* 28. *ſ.* 6. Notice to be given of ſeizure.

8. If any brandy or ſpirits be imported in any veſſel of the burden of 40 tons or under (except for the uſe of the ſeamen on board, not exceeding one gallon for each); ſuch veſſel with her tackle, and alſo the ſpirits, or the value thereof, ſhall be forfeited, and may be ſeized by any officer of the cuſtoms, and proſecuted in the courts at *Weſtminſter*. 6 *G.* *c.* 21. *ſ.* 29. 8 *G.* *c.* 18. *ſ.* 1, 2. In what ſhips to be imported.

9. And where any veſſel of 50 tons or under, being in part or fully laden with brandy, ſhall be at anchor, or within two leagues from the ſhoar, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed ſloop appointed for the guard of the coaſts, or the commander of any ſloop or veſſel in the ſervice of the cuſtoms, may compel the maſter to come into port; and the ſame ſhall be liable in all caſes as ſhips hovering within the limits of any port. 6 *G.* *c.* 21. *ſ.* 31. Ships hovering near the coaſt.

And if the maſter, purſer, or other perſon having charge of the veſſel, ſhall ſuffer any brandy (or other uncuſtomed goods) to be put out of the ſhip, into any hoy, lighter, boat, or bottom, to be laid on land; he ſhall, beſides the other penalties, ſuffer ſix months impriſonment. 6 *G.* *c.* 21. *ſ.* 32.

And by the 9 *G.* 2. *c.* 35. Where *any* veſſel coming from foreign parts, and having on board any foreign brandy or ſpirits, in caſks under ſix gallons (except only for the uſe of the ſeamen, not exceeding two gallons each) ſhall be found at anchor, or hovering within two leagues of the ſhore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all ſuch ſpirits, with the caſks and other package, or the value thereof, ſhall be forfeited (whether bulk ſhall have been broken or not); and the ſame may be ſeized, or the value thereof ſued for by the officers. *ſ.* 22.

10. No brandy ſhall be imported in any veſſel not containing 60 gallons at the leaſt; on pain of forfeiting the ſame, or the value. 4 *W.* *c.* 5. *ſ.* 8. In what caſks to be imported.

11. All rum or ſpirits of the growth or manufacture of the *Britiſh* ſugar colonies (imported directly from thence) on entry made, and before payment of the duty, may be landed and put into warehouſes, provided at the charge of the proprietor or importer, and approved of by the commiſſioners; the proprietor or importer firſt giving bond for payment of the duty, if it be ſold within ſix months; and if it be not ſold in that time, then to pay the duty at the end of ſix months, according to the gage taken at the time of landing and lodging in the warehouſe. 15 *G.* 2. *c.* 25. *ſ.* 1. Rum to be warehouſed on importation.

And if any rum or spirits be landed, before entry at the custom house and with the collector of excise, and the duties secured, or without warrant for landing, or without the presence of an excise officer; the same shall be forfeited, or the value thereof. *s.* 3.

And before it be landed and lodged in the warehouse, a mark shall be set upon every cask, mentioning the quantity, and the proprietor or importer; and the warehouse keeper and excise officer shall each keep a book, and enter the particulars carried in or out, and when, and for whose use delivered; and every six months, or oftner if required, transmit an account thereof in writing, and on oath, to the commissioners of excise, who shall in one month examine the same: and if any rum or spirits shall be delivered contrary to this act, the warehouse keeper or officer offending shall be disabled from holding any publick employment, and forfeit 100 *l.* *s.* 4.

And the rum or spirits may be delivered out of the warehouse, on payment of the excise, and on producing to the warehouse keeper, and the excise officer attending the warehouse, a certificate of such payment; and the warehouse keeper shall give a permit therewith, signed by the excise officer, to prevent the seizing thereof. *s.* 5.

But no proprietor, importer, or buyer, shall receive out of the warehouse less than one vessel of 20 gallons, unless for the use of seamen in a voyage. *s.* 6.

And the proprietor or importer may fix a lock on the warehouse and keep the key; and the excise officer may put on another, and keep the key; and the proprietor or importer may in presence of the warehouse keeper, or excise officer, at all reasonable times, view, and take out as aforesaid. *s.* 7.

And if any rum or spirits remain in the warehouse above six months, without paying the duty, the commissioners of excise may sell them by auction, and pay themselves the duty and charges, rendring the overplus to the proprietor or importer. *s.* 9.

Duty on home spirits.

12. For every gallon of spirits made of imported wine or cyder, shall be paid in the whole the sum of 1 *s.* 3 *d.*

For every gallon of strong waters or *aqua vitæ*, made of any other materials, 7 *d.* ½.

If from foreign or from home materials mixed with foreign; then a further duty of 6 *d.*

If from brewers wash or tilts, 5 *d.* ½.

If from drink brewed of malted corn, 5 *d.* ½.

If from other *British* materials, or any mixture therewith 5 *d.*

For every gallon of low wines or spirits of the first extraction, made from foreign materials, 1 *s.* 7 *d.*

From brewers wash or tilts, 1 *s.* 4 *d.*

From drink of malt, 5 *d.*

From any other *English* materials, 7 *d.*

But low wines or spirits of the first extraction drawn from melasses only, shall be liable only to 1 *s.* a gallon; and all spirits from low wines, or spirits of the first extraction, drawn from melasses only, shall be chargeable with 6 *d.* a gallon. 19 *G.* 2. *c.* 12. *s.* 37.

Note;

Note; All ſpirits drawn by any diſtiller from any mixture of ſpirits with any kind of waſh or other liquor (except common water) ſhall be deemed low wines, and chargeable with the duties impoſed on low wines drawn from foreign materials. 10 & 11 *W.* *c.* 4. *ſ.* 9.

13. Any perſon who ſhall ſet up any work or office for that purpoſe, and thereof ſhall give notice to the commiſſioners of exciſe in ten days, may diſtill for ſale, or to be retailed, any low wines or ſpirits from drink brewed from malted corn or cyder, and rectify and refine any ſuch ſpirits of their own making only, paying duties and ſubject to the ſame regulations as other diſtillers. 8 & 9 *W.* *c.* 19. *ſ.* 13. Concerning diſtillers.

And by the 12 *An.* *ſt.* 2. *c.* 3. Any perſon may diſtill brandy or ſpirits made from *Britiſh* malt or cyder, altho' he hath not ſerved ſeven years apprenticeſhip. *ſ.* 9.

And by the 9 G. 2. *c.* 23. Any perſon who hath exerciſed the buſineſs of diſtillation for ſeven years, or hath ſerved, or on *Mar.* 25. 1736. was ſerving an apprenticeſhip in the ſame, may follow any other trade or buſineſs in any city, town, or place. *ſ.* 21.

14. No common diſtiller or maker of low wines, ſpirits, or ſtrong waters, for ſale or exportation, ſhall ſet up any tun, caſk, waſhbatch, copper, ſtill, or other veſſel, for making or keeping any worts, waſh, low wines, ſpirits, or ſtrong waters, nor alter or enlarge the ſame, nor have any of them private or concealed, or any private warehouſe, ſtorehouſe, cellar, or other place for making or keeping any the ſaid liquors, without firſt giving notice at the next office of exciſe; on pain of 20 *l.* and he in whoſe occupation any of the ſame ſhall be, ſhall forfeit 50 *l.* 8 & 9 *W.* *c.* 19. *ſ.* 10. Notice of houſes and veſſels.

And every perſon making or keeping any waſh, cyder or other materials fit for diſtillation, and having in his poſſeſſion any ſtill or ſtills containing 20 gallons or upwards; ſhall be deemed a common diſtiller for ſale. *ſ.* 11.

And if any officer of exciſe ſhall have cauſe to ſuſpect any ſuch private ſtill, back, or other veſſel, ſpirits, low wines, waſh or other materials prepared for diſtillation, to be ſet up or kept in any place, and ſhall make affidavit before a juſtice of the peace, and therein declare the grounds of his ſuſpicion; he may, in the day time, and in preſence of a conſtable, by warrant from ſuch juſtice to be directed to ſuch officer, break open the door or any part of ſuch ſuſpected houſe or place, and enter, and ſeize the ſame, and detain them there; and if they ſhall not in 20 days be claimed by the owner, they ſhall be forfeited, and ſold at the next general day of ſale; and if they be claimed in 20 days, the perſon claiming ſhall forfeit for every warehouſe or other place, in which any ſuch ſtill, back, or other veſſel ſhall be found, and alſo for every ſuch ſtill, back, and other veſſel found therein, 200 *l.* 10 & 11 *W.* *c.* 4. *ſ.* 7. And by the 10 & 11 *W.* *c.* 21. he ſhall incur this forfeiture, whether he ſhall make any ſuch claim or not. *ſ.* 23.

But if on breaking open any ſuch door or houſe, no ſuch private back, ſtill, or other veſſel, ſpirits, low wines, waſh, or other materials

materials for distillation, shall be found, the officer shall make good the house or place so broken up, or make satisfaction to the owner to be adjudged by the two next justices (1 Q.); or the party injured may bring his action for the damages; and the same shall be paid by the commissioners out of the revenue of excise; and if any person shall obstruct such officer, he shall forfeit 200*l.* 10 & 11 *W.* *c.* 4. *s.* 8.

Vessels to be marked.

15. Every distiller shall ten days before he distills or makes any spirituous liquors, make entry at the next office of excise, of every still and other vessel which he shall make use of for brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, spirits, or strong waters; and also of the vessels used for brewing or keeping of the after runnings or feints from the second extraction (which last mentioned vessels shall not at any one time exceed two in number), and also of all such new utensils as they shall make use for the purposes aforesaid, on pain of 50*l.* for every such still or other vessel, used and not entred: And the distiller shall shew to the officer every still or other vessel entred, and the officer shall mark the same with a particular and durable mark; and every vessel used by such distiller without being so shewn or marked, shall be deemed a vessel or utensil of which no entry has been made; and if any person shall rub out or deface such mark, he shall forfeit 20*l.* 24 *G.* 2. *c.* 40. *s.* 22.

Private cocks and pipes.

16. No distiller shall have any private pipe or stop cock, or other conveyance, by which any wash or other liquors fit for distillation may be conveyed from one back or vessel to another, or from any such back or vessel to his still, or into any other place, nor shall have any hole in any back or washbatch, by which any wash or other liquor fit for distillation may be conveyed into or out of the same; on pain of 100*l.* 10 & 11 *W.* *c.* 4. *s.* 3.

And the excise officer in the day time, and in presence of a constable, on request made and cause declared, may break up the ground in any distilling house, or the ground near adjoining, or any wall, partition, or other place, to search; and on finding such pipe or other conveyance, may break up the ground, house, wall, partition, or other place, thro' or into which any such pipe or other conveyance shall lead, and may break up or cut any such pipe or other conveyance, and may turn any cock to try whether such pipe may convey any wash or other liquor. *s.* 4.

And if no such pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (1 Q.); or the party injured may bring his action for damages; the same to be paid by the commissioners out of the revenue of excise. And if any person obstruct such officer, he shall forfeit 100*l.* *s.* 5.

But any distiller may use any pipe, stop cock, or other conveyance above ground, in open view, from one end to the other, for letting his wash out of the coolers into his backs or washbatches, and for conveying the wash or worts, out of the back or washbatch into the still. *s.* 6.

17. The

17. The distiller, within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, sugar, water, or any kind of fermented wash, into his custody, give notice to the officer of excise, of the quantity and species, and when he intends to receive the same; on pain of 50*l.* 24*G.* 2. *c.* 40. *s.* 24. Notice of taking in materials.

And by the yearly malt acts, every distiller who shall receive any quantity of cyder or perry into his custody, shall give notice in writing to the officer under whose survey he shall reside, 48 hours before he shall begin to put any of the same into the still, to be drawn into low wines or spirits; and if he shall not give such notice, or shall dispose of any quantity thereof otherwise than by distillation, he shall forfeit 5*l.* 28*G.* 2. *c.* 2. *s.* 9.

18. The excise officers by day or by night (but if in the night, in presence of a constable) may enter into all houses and places made use of by distillers or dealers in the said liquors, and by tasting, gaging, or otherwise, may take an account of the quantity and quality; and if such person shall obstruct the officer, he shall forfeit 50*l.* 6*G.* *c.* 21. *s.* 14. Officer to enter and survey.

19. And the officer may take a sample of the low wines or spirits, and of the feints and spent wash, paying for such spirits or low wines after the rate of 10*s.* a gallon, and for the feints and spent wash 1*s.* a gallon; and if any distiller, his workman or servant, shall refuse to permit him to take such samples, or shall obstruct him in taking thereof, he shall forfeit 50*l.* 24*G.* 2. *c.* 40. *s.* 23. Officer may take a sample.

20. If the distiller or maker shall conceal any the said liquors from sight of the gager, he shall forfeit 5*s.* a gallon. 3*W.* *c.* 15. *s.* 2. Concealing from the gager.

21. The officer may keep an account of the several sorts of wash which shall be found by him in the hands of a distiller, and upon any decrease of such wash brewed or made from malted corn or corn unmalted, may charge such distiller with so much low wines or spirits of the first extraction as one fourth part of the same wash so decreased shall amount unto; and also with so much proof spirits or spirits of the second extraction, as three fifth parts of the said low wines so charged shall amount unto: and also upon any decrease of wash made from cyder or perry, may charge such distiller upon whom such decrease shall be found, with so much low wines or spirits of the first extraction, as one fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one half part of the same low wines or spirits of the second extraction shall amount unto. 4*An.* *c.* 12. *s.* 4. Officer to charge for materials missing.

22. No distiller shall deliver or carry out any low wines, spirits, or *aqua vitæ*, to any of their customers, in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from *Sep.* 29 to *Mar.* 25 yearly, between five in the morning and eight in the evening, and from *Mar.* 25 to *Sep.* 29 yearly, between three in the morning and nine in the evening; on pain of 10*l.* 7 & 8*W.* *c.* 30. *s.* 15. Carrying out of the still house.

Retailers houſes to be entred.

23. Every perſon who ſhall retail leſs than two gallons, ſhall ten days before make entry in writing of all warehouſes, ſhops, cellars, or other places by him intended to be uſed, at the next exciſe office; and of all ſpirituous liquors therein: on pain of 20*l.* for every place, and 40*s.* for every gallon not entred, and alſo the liquors and caſks. 9 *G.* 2. *c.* 23. *ſ.* 7.

Retailer to give notice of bringing in.

24. And no ſpirituous liquors ſhall be brought into any ſuch warehouſe or other place, without firſt giving notice to the officer of exciſe; and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expreſſing the quantity and quality, the name of the ſeller, and where the duties were paid, or the liquors condemned; on pain of 20*l.* and the liquors and caſks. 9 *G.* 2. *c.* 23. *ſ.* 7.

Permit on bringing in.

25. No *foreign* brandy or ſpirits, altho' under one gallon, ſhall be received into the cuſtody of any retailer, without a permit ſignifying that the duties were paid, or that it had been condemned; on pain of forfeiting the ſame, and the veſſel. 8 *G.* *c.* 18. *ſ.* 13.

Britiſh to be kept ſeparate from foreign ſpirits.

26. All dealers in foreign brandy or ſpirits, who ſhall receive into their cuſtody *Britiſh* ſpirits, ſhall keep the ſame in ſeparate cellars or other places, from their foreign brandy or ſpirits; on pain of 10*s.* for every gallon of *Britiſh* ſpirits found in the ſame place with the foreign ſpirits, together with the caſks in which the ſaid *Britiſh* ſpirits ſhall be found. 8 *G.* *c.* 18. *ſ.* 11.

Retailer increaſing the liquors.

27. No retailer ſhall make any increaſe of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40*s.* a gallon, and the liquors ſo mixed ſhall be ſeized and forfeited. 9 *G.* 2. *c.* 23. *ſ.* 8.

And if the officer of exciſe ſhall find any increaſe of *foreign* ſpirits, over and above the quantity which he found at any dealers on the laſt ſurvey, ſuch increaſe ſhall be deemed to be made by foreign ſpirits for which no duty was paid; and ſo much as ſhall be found increaſed, ſhall together with the caſk be forfeited, unleſs the owner make it appear, that the increaſe was made by mixing therewith in the preſence of the officer of the diviſion, ſome of his ſtock of *Britiſh* ſpirits whereof the officer had taken an account, or by foreign ſpirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 *G.* *c.* 18. *ſ.* 12.

Retailer concealing.

28. The officers at all times by day and night (but if in the night, in preſence of a conſtable, oath being firſt made before a juſtice dwelling near of a probable cauſe of ſuſpecting a concealment) may enter into all ſuch warehouſes, ſhops, or other places, and by taſting, gaging, or otherwiſe, take an account of the quantity and quality; and if any ſuch retailer ſhall hinder the officer, he ſhall forfeit 50*l.* 9 *G.* 2. *c.* 23. *ſ.* 9.

None to be ſold but in entred places.

29. And no ſuch liquors ſhall be ſold, but in ſuch warehouſe, ſhop, cellar, or other place, ſo entred; on pain of 40*s.* a gallon. 6 *G.* *c.* 21. *ſ.* 15.

And by the 11 *G.* *c.* 30. No *arrack*, whether *Britiſh* or foreign, ſhall be offered to ſale, either by wholeſale or retail, but in an entred

entred place; on pain of forfeiting the same, with the casks or other vessels, besides the said penalty of 40 *s.* a gallon. *s.* 3.

30. Every person who shall have in his custody above 63 gallons, shall be deemed a seller and dealer in such liquors. 6 *G. c.* 21 *s.* 18. Who shall be deemed a seller and dealer.

31. No person shall retail any distilled spirituous liquors or strong waters, mixed or unmixed, without a licence taken out ten days before, for which he shall pay 40 *s.* yearly; if within the bills, from two commissioners of excise; elsewhere, from the collectors and supervisors within their respective districts. 16 *G.* 2. *c.* 8. *s.* 3. 24 *G.* 2. *c.* 40. *s.* 9. Licence for retailing.

And every person who shall retail spirituous liquors mixed or unmixed, to be drank in any quantity whatsoever, in any place to him belonging; or shall retail or send the same abroad in less quantity than two gallons, shall be deemed a *retailer*. 17 *G.* 2. *c.* 17. *s.* 20.

32. And no such licence shall be granted, except to such persons only who keep taverns, victualling houses, inns, coffee houses, or alehouses; and all other licences shall be void; and if any licensed person shall exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for sale of spirituous liquors, the licence shall be void. 17 *G.* 2. *c.* 17. *s.* 19. Who only shall have licences.

And no licence shall be granted within the limits of the head office of excise in *London*, but to such as occupy tenements of 10 *l.* a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay rent of 12 *l.* a year, and not otherwise; nor to persons in any other part of the kingdom, but such as pay to the church and poor: And no licence shall be of any avail longer than he shall be so qualified. 24 *G.* 2. *c.* 40. *s.* 12. 26 *G.* 2. *c.* 13. *s.* 9.

33. And such persons also shall first be licensed to sell ale or spirituous liquors, by two or more justices of the peace. 16 *G.* 2. *c.* 8. *s.* 11. To be first licensed to sell ale.

And the justices of the peace, and other officers, shall have the same jurisdiction over such retailers of spirituous liquors, as they have over alehousekeepers. 12 & 13 *W. c.* 11. *s.* 18. 2 *G.* 2. *c.* 28. *s.* 10.

34. And no licence shall impower any person to sell spirituous liquors in any place, except in the house or places thereto belonging, wherein they shall inhabit at the time of granting the licence. 17 *G.* 2. *c.* 17. *s.* 22. To be licensed only where they dwell.

35. Persons retailing without licence shall forfeit 10 *l.* and on nonpayment when demanded, one justice on oath of such neglect shall commit the offender to the house of correction, to be kept to hard labour for two months, or till paid. 16 *G.* 2. *c.* 8. *s.* 9. Penalty of selling without licence.

And the said penalty shall in no case be mitigated below the sum of 5 *l.* 24 *G.* 2. *c.* 40. *s.* 11. 26 *G.* 2. *c.* 13. *s.* 8.

And the justices may, if they think proper, instead of levying the penalty, commit the offender to the house of correction, to be kept to hard labour for two months; and the person so committed

ſhall before his diſcharge, be ſtript naked from the middle upwards, and whipt until his body be bloody. 17 *G.* 2. *c.* 17. *ſ.* 18.

And alſo all the diſtilled ſpirituous liquors that ſhall be then, or at any time within ſix months after conviction, found in his cuſtody, houſe, or other place occupied therewith, whether it be in his own occupation or not, ſhall by warrant of the ſaid commiſſioners, or of one juſtice, be ſeized, and ſtaved, or otherwiſe deſtroyed: And any peace or pariſh officer, authorized by ſuch warrant, may at any time in ſix months after conviction enter ſuch places, and break open doors, if not opened on demand. And if any perſon ſhall offend again in like manner, the commiſſioners or juſtices before whom he ſhall be convicted of ſuch ſubſequent offence, may inflict the penalties by any former law to be inflicted for ſuch offence, and alſo commit the offender to the houſe of correction, to be kept to hard labour not exceeding three months, and alſo (if they ſhall think fit) order him to be whipt. And being convicted of a third offence, it ſhall be deemed felony, and the ſeſſions may tranſport him for any time not exceeding ſeven years. 24 *G.* 2. *c.* 40. *ſ.* 13.

And the conviction ſhall be in this form, or to the like effect, *viz.*

Middleſex. A. B. *is convicted on his own confeſſion* (or *on the oath of* A. W.) *of having ſold ſtrong waters in the pariſh of* ——— *in this county, on the* ——— *day of* ——— *without being duly licenſed thereto: This is the firſt, ſecond, or third conviction. Given under my hand and ſeal* &c.

And the commiſſioners, or one juſtice, on oath of any offence againſt this act, or any other act for regulating the retailing of ſpirituous liquors, may grant a warrant to any of the peace officers, or other pariſh officers, to enter and ſearch the houſes and other places, where the offence ſhall be ſworn to have been committed, or in the occupation of the perſons ſworn to be guilty thereof, and they may break open the doors if not opened on demand, and ſeize all ſuch diſtilled ſpirituous liquors as they ſhall there find, and detain the ſame, till the offence ſhall be heard and determined; and if the offender be convicted, the liquors ſhall be forthwith ſtaved; and if he be not convicted, the ſame ſhall be reſtored. 24 *G.* 2. *c.* 40. *ſ.* 14.

Hawking in the ſtreets.

36. No perſon ſhall hawk, ſell, or expoſe to ſale any ſpirituous liquors about the ſtreets, highways, or fields, in any wheelbarrow or baſket, or on the water in any boat, or in any other manner; or ſhall ſell or expoſe the ſame to ſale, on any bulk, ſtall, or ſhed, or any other place other than as above is allowed; on pain of 10 *l.* And one juſtice, on his own view, or confeſſion, or proof of one witneſs, may convict him; whereupon he ſhall immediately pay the 10 *l.* to the churchwardens and overſeers: and on refuſal or neglect, the juſtice ſhall commit him to the houſe of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he ſhall not be diſcharged till he pay the ſum, or till the two months be expired. If there is no informer, it ſhall be wholly to the uſe of the

poor; otherwiſe, half to the informer, and half to the poor. 9 *G.* 2. *c.* 23. *ſ.* 13.

And moreover, he ſhall before his diſcharge from the houſe of correction, be ſtripped naked from the middle upwards, and whipt until his body be bloody. 10 *G.* 2. *c.* 17. *ſ.* 9.

And any one juſtice, on information on oath againſt ſuch perſon, may (without any previous ſummons) iſſue his warrant for apprehending and bringing him before ſome juſtice where the offence was committed. 11 *G.* 2. *c.* 26. *ſ.* 4.

And any perſon may ſeize and detain him, until he may give notice to the conſtable, churchwarden, overſeer, or other peace or pariſh officer; who ſhall carry the perſon ſo ſeized and detained, before a juſtice of the peace, who ſhall proceed thereon as in caſe where he is brought by the conſtable. 11 *G.* 2. *c.* 26. *ſ.* 5.

M. 13 *G.* 2. *K.* and *Crofts.* A woman was convicted for ſelling gin, and it appearing that ſhe was a feme covert, it was objected that ſhe could not be convicted, for as ſhe could make no contract, it muſt be taken to be her huſband's ſale; or if ſhe could be convicted, the huſband ought to have been joined for conformity. It was anſwered, that where the crime is of ſuch a nature, as can be committed by her alone, ſhe may be proſecuted without her huſband; which being a proceeding grounded merely on the breach of the law, he ſhall not be included unleſs privy: In this caſe there may be impriſonment and whipping. And by the court, We think the conviction is right; for this is not like the caſes that found only in damages. The wife may be convicted for recuſancy. And though ſhe cannot have the benefit of the contract, yet ſhe as well as a ſervant may do the act of vending. Beſides, there would be a plain way to evade the act, if femes covert could not be convicted. *Str.* 1121.

Occupier of the houſe ſhall be liable.

37. If any leſs quantity than two gallons ſhall be ſold or delivered in any clandeſtine manner, to any perſon, in any houſe, outhouſe, ſtable, barn, ſhed, or other place, part of or belonging to any houſe or farm; in ſuch caſe, the occupier, or occupiers (if more than one) conſenting thereto, ſhall be deemed retailers, and forfeit as ſelling without licence. 11 *G.* 2. *c.* 26. *ſ.* 1.

Perſons giving away ſpirituous liquors.

58. Perſons giving away ſpirituous liquors, to ſervants or apprentices fetching goods from their ſhops, ſhall be deemed retailers. 9 *G.* 2. *c.* 23. *ſ.* 16.

Paying wages in ſpirituous liquors.

39. If any maſter or other perſon ſhall agree to pay any workman, ſervant, or labourer, or other perſon employed by him or for him, ſo much money for wages, and ſo much ſpirituous liquors, as together with the money ſhall amount to the value of the wages uſually paid in like caſes; or ſhall ſet off or deduct any part of the wages, for any ſpirituous liquors; he ſhall be deemed a retailer, and forfeit 20*l.* over and above the other penalties, and ſuch ſervant ſhall be intitled to his whole wages. 9 *G.* 2. *c.* 23. *ſ.* 11.

Apothecaries ſelling ſpirituous liquors.

40. But nothing herein ſhall extend to phyſicians or apothecaries ſelling the ſame as medicines. 9 *G.* 2. *c.* 23. *ſ.* 12. 16 *G.* 2. *c.* 8. *ſ.* 12.

Selling in gaols or workhouſes.

41. No licence ſhall be granted for retailing of any ſpirituous liquors, within any gaol, priſon, houſe of correction, workhouſe, or houſe of entertainment for pariſh poor; and if any keeper of ſuch priſon or houſe ſhall ſell, uſe, lend, or give away, or knowingly ſuffer any ſpirituous liquors or ſtrong waters to be ſold, uſed, lent, or given away in any ſuch gaols or houſes, or brought into the ſame, except ſuch as ſhall be preſcribed by the direction of a regular phyſician, ſurgeon, or apothecary, from the ſhop of ſome regular apothecary,———he ſhall forfeit 100*l.* half to the king, and half (with full coſts) to him who ſhall ſue in the courts at *Weſtminſter*. And if any ſuch perſon ſhall offend again in like manner, and be a ſecond time convicted; he ſhall forfeit his office. 24 *G.* 2. *c.* 40. *ſ.* 17.

And any juſtice, on information on oath that ſpirituous liquors or ſtrong waters are kept and diſpoſed of in any ſuch priſon or other place, may enter and ſearch, or impower by warrant any conſtable to ſearch for and ſeize all ſuch liquors as ſhall be found (except ſuch as are directed to be uſed medicinally) and to ſtave and deſtroy the ſame. *ſ.* 18.

And if any perſon ſhall bring, or endeavour to bring any ſuch liquors (except in the way of medicine as before mentioned) into any ſuch gaol or other place, the gaoler or his ſervants may apprehend and carry ſuch offender before any juſtice of the peace, who ſhall hear and determine ſuch offence in a ſummary way; and if by the oath of one witneſs, or otherwiſe, ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine not exceeding 20*l.* and not leſs than 10*l.* as the juſtice ſhall impoſe, to be paid half to the informer, and half to the poor of ſuch priſon or workhouſe. *ſ.* 19.

And the gaoler, keeper, maſter, or other officer, ſhall procure a copy of the three preceding clauſes, to be printed or fairly written, and hung up in one of the moſt publick places of his gaol, houſe of correction, or workhouſe aforeſaid, and renew the ſame from time to time, ſo that it be always kept fair and legible; on pain of 40*s.* by warrant of one juſtice, on oath of one witneſs. And any juſtice may enter and demand a ſight of it, and if it ſhall not be ſhewn to him hung up in ſome publick place fair and legible; he ſhall immediately convict ſuch perſon, and ſo from time to time as often as he ſhall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of ſuch gaol or other place. *ſ.* 20.

Recovering debt for ſpirituous liquors.

42. No perſon ſhall recover any debt on account of ſpirituous liquors, unleſs it ſhall *bona fide* have been contracted at one time to the amount of 20*s.* or upwards; nor ſhall any particular article in any account be allowed, where the liquors delivered at one time, ſhall not amount to the full value of 20*s.* and where no part of the liquors ſo ſold ſhall be agreed to be returned; and if any retailer, with or without a licence, ſhall take any pawn by way of ſecurity for payment of any money for ſuch liquors, he ſhall forfeit 40*s.* by warrant of one juſtice, half to the poor, and half to the informer; and the owner ſhall have ſuch

ſuch remedy for recovering ſuch pawn, as if it had never been pledged. 24 *G.* 2. *c.* 40. *ſ.* 16.

43 If any diſtiller or other perſon ſhall knowingly ſell or deliver any diſtilled ſpirituous liquors, that the ſame may be unlawfully retailed, or to any unlicenſed retailer; he ſhall forfeit 10*l.* and treble value of the liquors, half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*. And if any perſon guilty of retailing ſuch liquors, ſhall diſcover the diſtiller or perſon who knowingly ſupplied him therewith, and proſecute him to conviction, he ſhall be intitled to his ſhare of the penalty, and indemnified againſt all penalties incurred by him before that time, for ſelling ſpirituous liquors without licence. 24 *G.* 2. *c.* 40. *ſ.* 15. Diſtiller delivering to unlicenſed retailer.

44. If any perſons to the number of five or more, ſhall in a tumultuous and riotous manner aſſemble to reſcue any offenders againſt any act relating to ſpirituous liquors, or for licenſing the retailers thereof, or to aſſault any perſon who ſhall have given or is about to give any information againſt, or ſhall have diſcovered or given evidence againſt, or ſhall ſeize or bring to juſtice any offender; he, his aiders and abettors, ſhall be guilty of felony, and tranſported for ſeven years. 24 *G.* 2. *c.* 40. *ſ.* 32. Riotouſly reſcuing offenders, or aſſaulting informers.

45. Where any ſuch liquors ſhall be ſold in any ſuch entred place, the officer ſhall on requeſt of the ſeller (without fee) give the buyer a certificate ſigned by him, expreſſing the quantity, the name of the buyer and ſeller, and that the duty hath been paid, or that it hath been condemned as forfeited. 6 *G.* *c.* 21. *ſ.* 16. Permit for removal after ſale.

And no ſuch liquor, exceeding one gallon, ſhall be carried without ſuch certificate or permit; on pain of forfeiting the ſame with the caſks and veſſels. *ſ.* 17.

And if any perſon ſhall take out a permit, and not remove the liquors accordingly, nor return the permit; he ſhall forfeit treble value: And if there appears not a ſufficient decreaſe in the ſtock, to anſwer the quantity in the permit, the officer may ſeize ſo much as will anſwer the quantity. But no perſon ſhall receive a permit, without direction in writing of the perſon (or his ſervant) from whoſe ſtock the goods are to be removed; on pain of 50*l.* and in default of payment, three months impriſonment. 11 *G.* *c.* 30. *ſ.* 10.

46. If any perſon ſhall offer any ſpirituous liquors to ſale, not having a permit; or if any pedlar, or other trading perſon, going from town to town, or other mens houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch liquors to ſale, altho' he have a permit: the perſon to whom they are offered to ſale, may ſeize and detain ſuch liquors, and carry them to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice, to be by him committed to priſon, and proſecuted for the penalties incurred for ſuch offence; and ſuch liquors may be proſecuted in the name of the perſon who ſtopped or ſeized the ſame, in like manner as if they had been ſeized by an officer. 9 *G.* 2. *c.* 35. *ſ.* 20. Selling without a permit, or pedlars with one.

47. When any officer of the cuſtoms ſhall neglect to ſeize and proſecute any veſſel, boat, horſes, or other cattle or carriage, for- Officer neglecting to ſeize.

feited for running of brandy, and shall be convicted thereof on his appearance or default, by oath of one witness or confession; he shall forfeit 50 *l.* 6 *G.* 2. *c.* 17. *s.* 10.

Constable neglecting his duty.

48. If any constable or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 *G.* 2. or 10 *G.* 2. herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20 *l.* 11 *G.* 2. *c.* 26. *s.* 7.

Carrying coastwise.

49. All low wines or spirits carried coastwise, without a certificate from the officer of excise where they were made, that the duty hath been paid, shall be forfeited, and seized by the officers where they shall be brought in. 3 *G.* *c.* 4. *s.* 17.

Exportation.

50. It is generally provided by the several statutes, that home spirits may be exported, and a drawback of the duties allowed thereupon.

But by the 6 *G.* 2. *c.* 17. for spirits drawn from *British* corn, there shall be allowed a drawback by the excise officers at the port of shipping, of 4 *l.* 18 *s.* a ton, in full of all drawbacks: Except that for every ton of spirits drawn from barley malt, or other corn, there shall be paid by the officers of the customs, when barley is 24 *s.* a quarter, or under, 1 *l.* 10 *s.* in like manner as for corn exported. *s.* 7, 8.

Power of the justices.

51. All the penalties, not herein otherwise directed, shall be sued for and mitigated as by the laws of excise, or in the courts at *Westminster*; and be half to the king, and half to the informer or prosecutor. 24 *G.* 2. *c.* 40. *s.* 33.

Reward where no penalty is levied.

52. And where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 5 *l.* to be paid to the informers. 17 *G.* 2. *c.* 17. *s.* 21.

Limitation of actions.

53. No information shall be brought against a distiller, for any false or misentry, or offence, but within three months after the offence committed; and notice thereof shall be given to the party in writing, or left at his dwelling house, within a week after laying the information. 12 & 13 *W.* *c.* 11. *s.* 17.

Sale after condemnation.

54. And the commissioners shall cause all foreign excisable liquors, seized for non-payment of duty, or for being prohibited to be imported, to be publickly sold, after condemnation, to the best bidder, at such places as they shall think proper. 12 *G.* *c.* 28. *s.* 1.

Utensils liable.

55. And all stills, worms, and still heads, and other vessels and utensils for distilling, by whomsoever they shall be claimed, shall be liable to arrears. 7 & *W.* *c.* 30. *s.* 13.

Conviction to be kept amongst the records of the sessions.

36. The justices within the limits of the head office of excise in *London*, shall once in every month transmit to the clerk of the peace, a certificate of all persons convicted before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof; who shall keep and enter the same among the records of the court: which certificate shall be evidence upon any information relating to spirituous liquors. 24 *G.* 2. *c.* 40. *s.* 21.

XV. Starch and hair powder.

1. By the 10 *An. c.* 26. and 12 *An. ſt.* 2. *c.* 9. For all ſtarch imported ſhall be paid 4*d.* a pound, over and above all other duties. Duty on ſtarch imported.

And all hair powder made of ſtarch, or other powder that will ſerve for the ſame uſes as ſtarch, ſhall on importation pay the ſame duties, as foreign ſtarch imported. 3 *G. c.* 4. *ſ.* 14.

2. And by the ſaid acts, for all ſtarch made in the kingdom, a duty ſhall be paid of 3*d.* a pound. Duty on home ſtarch.

3. For the management of which duties on home ſtarch, the commiſſioners of the treaſury ſhall appoint commiſſioners, who ſhall ſubſtitute inferior officers. 10 *An. c.* 26. *ſ.* 9. Officers for theſe duties.

3. And no maker of ſtarch ſhall ſet up or uſe any workhouſe, ſtorehouſe, room, or other place, for making, drying, or keeping of ſtarch, or for the converting or keeping any flour, meal, or other materials proper to be made into ſtarch, or uſe any fat, trough, box, ſtove, utenſil or other veſſel for making of ſtarch; without notice thereof being firſt given in writing at the next office for the ſaid duties; on pain of 50*l.* 10 *An. c.* 26. *ſ.* 10. Places of making to be entred.

And all flour, meal, and other materials, found in any private workhouſe, or other place, and all private utenſils and veſſels for making or keeping ſtarch, for which no entry ſhall be made, or notice given, ſhall be forfeited, or the value thereof. 10 *An. c.* 26. *ſ.* 22.

5. And the officers ſhall at all times by day or night, and if in the night in preſence of a conſtable, be permitted on requeſt to enter the houſe, workhouſe, warehouſe, or other place uſed by any maker of ſtarch; and by gaging or weighing the ſtarch, and gaging the boxes and other utenſils, or otherwiſe, to take an account of the quantity; and thereof ſhall make return in writing to the commiſſioners, leaving a true copy, if demanded, under his hand, with the maker; and if he ſhall not leave ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 40*s.* 10 *An. c.* 26. *ſ.* 14. Officers to enter and ſurvey.

6. And if the maker ſhall obſtruct ſuch officer in the execution of his duty, he ſhall forfeit 20*l.* 10 *An. c.* 26. *ſ.* 18. Obſtructing the officer.

7. The maker ſhall uſe regular, ſquare, or oblong boxes only, for boxing and draining his green ſtarch, before it is dried in the ſtove; on pain of 10*l.* 4 *G.* 2. *c.* 14. *ſ.* 1. How to be boxed in making.

8. And he ſhall, if within the bills, give 12 hours, elſewhere 24 hours notice in writing to the officer, of his intention to put any green ſtarch into ſuch boxes; on pain of 20*l.* And he ſhall, within two hours after ſuch notice ſhall have been given, begin to box it, and ſo continue, that the officer may have a gage of the whole; on pain of 20*l.* 4 *G.* 2. *c.* 14. *ſ.* 1. Notice of boxing.

9. And if the charge be made by gaging it before it be dried in the ſtove; then every box of green ſtarch, or ſtarch before it be dried, containing 57 inches in length, and 10 inches in breadth, and eight inches in depth, or in the whole 4560 ſolid inches, ſhall Gaging in the boxes.

be

be eſteemed 131 pounds *averdupois*, of ſtarch dried and perfectly made. 1 *G. ſt.* 1. *c.* 2. *ſ.* 6.

Scales and weights.

10. And the maker ſhall keep ſcales and weights at the place where he makes his ſtarch, and permit and aſſiſt the officer to make uſe thereof; on pain of 10 *l.* 10 *An. c.* 26. *ſ.* 16.

Removing before ſurveyed.

11. No maker of ſtarch ſhall (on pain of 20 *l.*) remove any ſtarch, of which no account hath been taken by the officer, from the place where it was made; without giving to the officer within the bills 24 hours notice, and elſewhere two days notice. 10 *An. c.* 26. *ſ.* 19.

And by 4 *G.* 2. *c.* 14. If he ſhall remove any ſtarch after it is dried, out of the ſtove or drying place, before it has been weighed and taken account of by the officer; he ſhall forfeit 50 *l. ſ.* 2.

Concealing.

12. If any officer of the duties upon ſtarch or of the cuſtoms, ſhall have any cauſe to ſuſpect that ſtarch is privately making in any place, or concealed; then upon oath made before any commiſſioner or juſtice reſiding near, ſetting forth the ground of his ſuſpicion, ſuch commiſſioner or juſtice may iſſue his warrant, to authorize ſuch officer by day or night (but if in the night, in preſence of a conſtable) to enter ſuch ſuſpected place, and ſeize and carry away the ſame, with the materials, as forfeited, together with the boxes and other things containing it: and unleſs the party make it appear that the duty has been paid, he ſhall forfeit 50 *l.* and if any perſon obſtruct the officer, he ſhall forfeit 100 *l.* 4 *G.* 2. *c.* 14. *ſ.* 4. 23 *G.* 2. *c.* 21. *ſ.* 34.

Officer to charge for materials miſſing.

13. The officer ſhall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into ſtarch, that ſhall be in the poſſeſſion of the maker; and if he ſhall miſs any ſuch materials, which he had taken an account of the laſt time he was there, and ſhall not on reaſonable demand, receive ſatisfaction what is become thereof, he may charge the maker with ſuch quantity of ſtarch, as ſuch materials ſo miſſing in his judgment would reaſonably have made, not exceeding 25 pounds weight of ſtarch, for every buſhel of ſuch ingredients mixed or unmixed. 10 *An. c.* 26. *ſ.* 17.

Starch unſurveyed to be kept ſeparate.

14. The maker ſhall keep all ſtarch by him made and not ſurveyed, ſeparate from other ſtarch which hath been ſurveyed, for 24 hours after making within the bills, and for two days elſewhere, unleſs it ſhall be ſooner ſurveyed; on pain of 5 *l.* 10 *An. c.* 20 *ſ.* 20.

Entry of ſtarch made.

15. The maker within the bills ſhall monthly, and elſewhere every ſix weeks, make entry in writing at the next office, of all the ſtarch by him made, ſetting forth the weight, and how much was made at each time; on pain of 50 *l.* Which entry ſhall be on oath of the maker or his chief workman, according to the beſt of his knowledge and belief, before ſuch officer as ſhall be appointed by the commiſſioners within the bills, and elſewhere before the collector and ſupervifor. 10 *An. c.* 26. *ſ.* 11.

But he ſhall not be obliged to go further to make entry, than to the next market town. *ſ.* 12.

Payment of the duties.

16. The maker within the bills ſhall within four weeks, and elſewhere within ſix weeks after entry, clear off the duties; on

pain of double duty: And no maker, after default in payment, ſhall ſell or deliver out any ſtarch until he hath cleared off the duty; on pain of double value. 10 *An.* *c.* 26. *ſ.* 13.

17. Cocquets granted for ſhipping ſtarch, to be landed in any other part of the kingdom, ſhall expreſs the quality, quantity, and weight, the mark of the package, and by whom made and ſold, and where conſigned; and if ſhipped without ſuch cocquet, it ſhall be forfeited and ſeized, together with the package. 23 *G.* 2. *c.* 21. *ſ.* 29. Carrying it coaſtwiſe.

18. No ſtarch ſhall be *imported* otherwiſe than in ſome package containing at leaſt 224 pounds of neat ſtarch, and ſtowed openly in the hold; on pain of being ſeized and forfeited, together with the package, and the maſter of the veſſel to forfeit 50*l.* 23 *G.* 2. *c.* 21. *ſ.* 27. Importation and exportation.

But on information brought againſt ſuch maſter, he may detain the wages of the mariners, till it be determined; and if it ſhall appear, that the ſtarch was put on board by any mariner without the maſter's knowledge, the maſter may apply the wages of ſuch mariner in payment of the forfeiture. 26 *G.* 2. *c.* 32. *ſ.* 8.

And the officers of exciſe (in like manner as the officers of the cuſtoms) may go on board any veſſel, and ſearch for and ſeize all ſtarch forfeited, together with the package; and they may likewiſe ſeize ſuch as before entry and payment of duties, ſhall be found unſhipping or unſhipped. 23 *G.* 2. *c.* 21. *ſ.* 28.

Starch that hath paid the duties may be *exported*; and the duties ſhall be drawn back. 10 *An.* *c.* 26. *ſ.* 25, 26, 27.

But no drawback ſhall be allowed on the exportation of any foreign ſtarch imported. 23 *G.* 2. *c.* 21. *ſ.* 36.

And the officers of exciſe or cuſtoms may ſeize any ſtarch or hair powder, with the horſes and package, where they have good reaſon to ſuſpect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and ſhall in ten days exhibit an information before three commiſſioners of exciſe, or two juſtices near where the ſeizure is made; and if the party doth not make it appear that the duty hath been paid it ſhall be forfeited together with the horſes and package, and the offender ſhall likewiſe forfeit 5*l.* for every hundred weight. 4 *G.* 2. *c.* 14. *ſ.* 3.

And by the 23 *G.* 2. *c.* 21. it is enacted, that the ſaid officers may ſeize any ſtarch, with the package, that ſhall be found in any veſſel, cart, or other carriage, where they ſhall have good reaſon to believe that the ſame was made in ſome private workhouſe, or clandeſtinely imported, or relanded after drawback: and if the party, at the hearing of the information, ſhall not make it appear that the duty hath been paid or ſecured, he ſhall forfeit 5*l.* for every 100 pounds weight, and alſo the goods and package ſhall be forfeited. *ſ.* 30.

And if any foreign ſtarch ſhall be unſhipped, with intention to be laid on land before entry and payment of the duties, or ſhall be landed again after ſhipping for exportation on debenture; the ſame, together with the package, veſſels, boats, horſes, and other carriages, uſed in landing or conveying the ſame, ſhall be forfeited,

ed, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized, shall forfeit 5 *l.* for every hundred weight. 23 *G.* 2. *c.* 21. *s.* 31.

And if any person shall knowingly harbour or conceal any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 *l.* for every hundred weight, together with the goods and package. 23 *G.* 2. *c.* 21. *s.* 32.

And where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation, at the next market town, on the market day, next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to appeal, nor be removed by *certiorari*. 23 *G.* 2. *c.* 21. *s.* 33.

Making of hair powder.

19. No perfumer, peruke maker, barber, or dealer in hair powder, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talke, plaister of *Paris*, whiting, lime, or other thing of the like nature (sweet scents only excepted); on pain of forfeiting the same, and 50 *l.* 12 *An. st.* 2. *c.* 9. *s.* 20.

And by the 4 *G.* 2. *c.* 14. If any maker of hair powder, or other such person, shall mix any powder of alabaster, plaister of *Paris*, talke, chalk, whiting, lime, or any other material (rice first made into starch, and sweet scents only excepted) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any the said materials, or any other material except starch or powder of starch, or of rice first made into starch, and shall use, sell, or offer to sell any hair powder so mixed or made; he shall forfeit the same, and 20 *l.* *s.* 5.

Places of making hair powder to be entred.

20. Every maker of hair powder shall make entry in writing at the next excise office, of his place of abode, and of his workhouse or other place made use of for making hair powder; on pain of 20 *l.* 4 *G.* 2. *c.* 14. *s.* 6.

Officer to enter the same and survey.

21. And the officer, in the day time, on his request, may enter places used for making hair powder, and the shops of perfumers, peruke makers, barbers, and other sellers or dealers in hair powder, and examine the same, and carry away samples, paying a reasonable price for the same. 4 *G.* 2. *c.* 14. *s.* 7.

And if such starch maker or dealer shall not on request suffer him to enter, and examine, and take samples (on offering to pay the common price); he shall forfeit 20 *l.* *id.* *s.* 9.

Person having in his possession materials for adulterating hair powder.

22. And if any starch maker, or dealer in hair powder, shall have in his possession, for making, mixing, or counterfeiting hair powder, any alabaster, plaister of paris, talk, chalk, whiting, lime, or other material, besides starch, or powder of starch, or of rice first made into starch; he shall forfeit the same, and 10 *l.* 4 *G.* 2. *c.* 14. *s.* 8.

23. All

23. All the said forfeitures shall be sued for, levied and mitigated, as by the laws of excise, or in the courts at *Westminster*; and be distributed half to the king, and half (and on the 10 *An.* *c.* 26. half with full costs) to the prosecutor. 10 *An.* *c.* 26. *s.* 29. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

24. And where any starch shall be seized for non-payment of duties, or non entry, and it shall be disputed whether such payment or entry were made or not; the proof shall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *s.* 34. Proof to lie on the claimer.

25. And if the party is not satisfied with any judgment of the justices, on the act of 23 *G.* 2. *c.* 21. abovementioned, he may appeal to the next quarter sessions (except in the case beforementioned, where no person shall claim the goods seized.) *s.* 36. Appeal.

26. And the mitigation on the said act of 23 *G.* 2. shall not reduce the penalty to less than a fourth part, over and above the charges. *s.* 37. Mitigation.

27. And all starch, materials, and utensils, in custody of the maker, or of any person to his use, shall be liable to all arrears of the duty, and penalties; and such proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 *An.* *c.* 26. *s.* 23. Utensils liable.

XVI. Wire.

1. No foreign embroidery, or gold or silver brocade, thread, lace, fringe, or work made thereof, or of copper, brass, or other inferior metal, or gold or silver wire or plate shall be imported. 15 *G.* 2. *c.* 20. *s.* 7. 22 *G.* 2. *c.* 36. *s.* 1. Importing of wire.

2. For all gilt wire made in *Great Britain* shall be paid a duty of 8*d.* an ounce; for silver wire 6*d.* an ounce, *troy* weight. 10 *An.* *c.* 26. *s.* 46. Duty on home wire.

3. And the commissioners of the treasury shall appoint commissioners for these duties, who shall substitute inferior officers. 10 *An.* *c.* 26. *s.* 48. Officers for these duties.

4. And every person who shall draw any gold or silver wire into such wire as is commonly called big wire, shall first give notice in writing at the next office for the said duties, of his name and place of abode, and where he intends to work; on pain of 20*l.* And no refiner, wiredrawer, or other person, shall draw any gold or silver into such big wire, at any place other than some common bar house to be approved of by the commissioners; on pain of 20*l.* 10 *An.* *c.* 26. *s.* 49. Places of making to be entred.

And all gilt and silver wire, and bars for making it, which shall be found in any private workhouse, and all private utensils for barring or drawing it, of which notice hath not been given, shall be forfeited and seized, or the value thereof recovered. 10 *An.* *c.* 26. *s.* 59.

5. And the officer shall at all times, by day or night, and if in the night in presence of a constable, be permitted on his request to enter the bar house, workhouse, or other place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall Officer to enter and survey.

ſhall appoint, leaving a copy thereof, if demanded, with the maker; and if he ſhall refuſe to leave ſuch copy (after demand in writing, 12 *G.* *c.* 28. *ſ.* 30.) he ſhall forfeit 40 *s.* 10 *An.* *c.* 26. *ſ.* 52.

Obſtructing the officer.

6. And if any ſuch maker ſhall obſtruct the officer, in the execution of his office, he ſhall forfeit 20 *l.* 10 *An.* *c.* 26. *ſ.* 55.

Scales and weights.

7. And the maker ſhall keep weights and ſcales at the place of making the wire, and permit and aſſiſt the officer to weigh; on pain of 10 *l.* 10 *An.* *c.* 26. *ſ.* 54.

Ingots to be weighed.

8. Every ingot or bar of ſilver, deſigned for gilt wire, ſhall be weighed in the preſence of the exciſe officer, who attends the forge where they are made, before they be covered with gold; and ſhall be weighed in preſence of, and marked by the ſaid officer, after the gold is laid on: and on refuſal to admit the officer, the refiner or maker ſhall forfeit 20 *l.* half to the king, and half to him that ſhall ſue. 15 *G.* 2. *c.* 20. *ſ.* 8, 9.

Allowance for waſte.

9. If the officer's charge be made, by taking the weight of the gold and ſilver in big wire at the bar houſe, an allowance of one fifth part ſhall be made, in conſideration of the waſte, in reducing the ſame to ſmall wire. 10 *An.* *c.* 26. *ſ.* 53.

Removing before ſurveyed.

10. No wire drawer ſhall (on pain of 40 *l.*) remove any gilt or ſilver wire, of which no account hath been taken, from the bar houſe or place of making, without giving to the officer 24 hours notice. 10 *An.* *c.* 26. *ſ.* 56.

Wire unſurveyed to be kept ſeparate.

11. Wire not ſurveyed ſhall be kept ſeparate from that which hath been ſurveyed, for 24 hours after making, unleſs it ſhall be ſooner ſurveyed; on pain of 10 *l.* 10 *An.* *c.* 26. *ſ.* 57.

Concealing.

12. If the maker, or he for whom it is made, ſhall conceal any wire, or bars of ſilver prepared for making it; he ſhall forfeit 20 *l.* 10 *An.* *c.* 26. *ſ.* 58.

Entry of wire made.

13. The maker ſhall once in every month make entry in writing at the next office, of all the wire by him made, ſetting forth the weight, and kinds, and how much was made in each week; on pain of 100 *l.* Which entry ſhall be made on the oath of the maker, or his chief workman, to the beſt of his knowledge and belief, to be adminiſtred by the officer. 10 *An.* *c.* 26. *ſ.* 50.

Payment of the duty.

14. And the duty ſhall be cleared off in ſix weeks after entry, on pain of double duty. 10 *An.* *c.* 26. *ſ.* 51.

Exportation.

15. If any perſon ſhall export any gold or ſilver thread, or lace, or fringe made of plate wire ſpun upon ſilk, he ſhall have a drawback after the rate of 5 *s.* a pound *averdupois*, of ſuch ſilver thread, lace, or fringe, and of 6 *s.* 8 *d.* a pound of ſuch gold thread, lace, or fringe. 10 *An.* *c.* 26. *ſ.* 62.

Power of the juſtices.

16. All the powers of the exciſe laws ſhall be in force for managing theſe duties: and the penalties and forfeitures (not herein otherwiſe directed) ſhall be ſued for, levied, and mitigated, as by the laws of exciſe, or in the courts at *Weſtminſter*; and be employed, half to the uſe of the king, and half to him that ſhall inform or ſue. 10 *An.* *c.* 26. *ſ.* 64. 24 *G.* 2. *c.* 40. *ſ.* 33.

Utenſils liable.

17. And all ſuch wire, materials, and utenſils, in cuſtody of any maker, or other to his uſe, ſhall be liable to the duties and penalties; and ſuch proceedings may be had thereupon, as if

if such debtor or offender were the lawful owner. 10 *An. c.* 26. *s.* 60.

For regulations concerning the true making of gilt and silver wire (which do not belong to this place) see the act of 15 *G.* 2. *c.* 20.

And for prohibiting the selling or working up of foreign gold or silver lace or thread, see the 22 *G.* 2. *c.* 36.

Information against an alehousekeeper for arrears.

Westmorland. BE *it remembred, that this* ——— *day of* ——— *in the* ——— *year of the reign of his majesty king* George *the second that now is, at* ——— *in the said county,* A. I. *gentleman, in his proper person, as well for his said majesty, as for himself, exhibiteth to us* A. P. *and* J. P. *esquires, two of his said majesty's justices of the peace for the said county, residing near to the place where the forfeiture herein after mentioned was made, a complaint and information, and thereby informeth us, that at several times between the* ——— *day of* ——— *and the* ——— *day of* ——— *both now last past, at* ——— *aforesaid in the said county, one* A. O. *at a common alehouse then and there belonging to and used by him, did brew the several and respective quantities of beer and ale herein aftermentioned; that is to say,* 30 *barrels of strong beer and of strong ale, each above* 6*s. the barrel; and* 60 *barrels of small beer, not exceeding* 6*s. the barrel; and that the said* A. O. *at and during the respective time and times of brewing the said beer and ale, and of every part thereof, was and yet is a common alehousekeeper; and that there did thereby accrue and become due to his said majesty from the said* A. O. *for the said beer and ale so by him brewed as aforesaid, certain rates, duties, and sums of money, amounting in the whole to the sum of* ——— *of lawful money of* Great Britain; *which said rates, duties, and sums of money so accrued, or any part thereof, the said* A. O. *hath not paid or cleared off, to or for the use of his said majesty, within a month next after he, according to the statute in that behalf made, did make, or ought to have made his entry or entries of the said beer and ale so by him there brewed as aforesaid, or of any part thereof, or at any time since; but the same yet remain wholly due and unpaid, contrary to the form of the statute in such case made and provided; whereby the said* A. O. *hath forfeited double the value of the said rates, duties, and sums of money remaining unpaid, as aforesaid; that is to say,* ——— *of like money; and thereupon the said* A. I. *who as well for his said majesty, as for himself, exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said* A. O. *may be summoned to answer the premisses before us the said justices.*

Summons

Summons on the foregoing information.

To Mr. A. O. alehouſekeeper.

Weſtmorland. WE J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county of* ——— *do hereby give you notice, that* A. I. *gentleman, hath exhibited before us an information againſt you for the ſum of* ——— *being double the value of certain duties of exciſe of beer and ale by you brewed, the ſingle duties whereof (as he alledgeth) you ought long ſince to have paid, but have neglected ſo to do: You are therefore hereby required to appear before us at the houſe of* ——— *at the ſign of the* ——— *in* ——— *in the ſaid county, on the* ——— *day of* ——— *now next enſuing, at* ——— *of the clock of the forenoon of the ſaid day, then and there to anſwer to the ſaid information. And if you ſhall neglect ſo to do, we ſhall proceed as if you were perſonally preſent. And we do further authorize and require Mr.* A. E. *officer of exciſe, or any other officer of exciſe, to ſerve this our ſummons, and to attend us at the time and place laſt mentioned, then and there to make a return thereof to us the ſaid juſtices. Given under our hands and ſeals at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of his ſaid majeſty king* George *the ſecond.*

Note; The officer who ſhall ſerve the ſummons, ought not to be the informer or proſecutor, for this obvious reaſon, becauſe that he, being intitled to a ſhare of the forfeiture, is not a proper witneſs to prove ſuch ſervice; for that would be admitting him to ſwear for himſelf in his own cauſe, which is abhorrent from the nature of our laws.

Information againſt a maltſter for concealing a quantity of malt.

Weſtmorland. BE *it remembred, that this* ——— *day of* ——— *in the* ——— *year of the reign of his majeſty king* George *the ſecond, at* ——— *in the ſaid county,* A. I. *gentleman, in his proper perſon, as well for his ſaid majeſty as for himſelf, exhibiteth to us* J. P. *and* K. P. *eſquires, two of his ſaid majeſty's juſtices of the peace for the ſaid county, reſiding near to the place where the offence herein aftermentioned was committed, as is alledged, a complaint or information, and thereby informeth us, that* A. O. *of* ———*in the ſaid county, during three months now laſt paſt and longer, having been and continued to be, and yet being a maltſter and maker of malt, and not having compounded for the duties of the malt herein aftermentioned, he the ſaid* A. O. *within three months now laſt paſt, at* ———*in the ſaid county, did fraudulently hide, conceal, and convey away malt by him made, that is to ſay,* 12 *buſhels of malt ſo by him made as aforeſaid, from the ſight and view of one* A. E. *being at the ſaid time of the ſaid hiding and concealing thereof, and long before, and ever ſince, the gager appointed to take an account*

account of the same, and then and there endeavouring to take such account; which hiding, concealing, and conveying away as aforesaid, are contrary to the form of the statute in such case made and provided: Whereby he the said A. O. *for every bushel of the said malt so hid and concealed, hath forfeited* 10 s. *of lawful money of* Great Britain, *amounting in the whole to* 6 l. *of like money. And thereupon the said* A. I. *who as well for his said majesty as for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said* A. O. *may be summoned to answer the said premisses, before us the said justices.*

Summons on the foregoing information.

Westmorland. { To Mr. A. O. maltster.

WE J. P. *and* K. P. *esquires, two of his majesty's justices of the peace, for the county aforesaid, do hereby give you notice, that* A. I. *gentleman, hath exhibited before us an information against you for the penalty of* 6 l. *by you forfeited, for hiding, concealing, and conveying away* 12 *bushels of malt, from the sight and view of the gager appointed to take an account of the same, against the form of the statute in such case made: You are therefore hereby required to appear before us, at the house of* ——— *at the sign of* ——— *in* ——— *in the said county, on the* ——— *day of* ——— *now next ensuing, at the hour of* ——— *in the forenoon of the same day, then and there to answer to the said information. And if you neglect so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr.* A. E. *officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under our hands and seals at* ——— *in the said county, this* ——— *day of* ——— *in the* ——— *year of the reign of his said majesty king* George *the second.*

Summons to give evidence.

Westmorland. { To A. W. of ——— yeoman.

WHEREAS *we whose hands and seals are hereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that* A. O. *of* ——— *in the said county, alehousekeeper, did on the* ——— *day of* ——— *now last past, brew and sell ale and beer, and hath not made entry thereof according to the statute in that behalf made; and that you the said* A. W. *are a material witness to be examined concerning the same: These are therefore to require you to appear before us at the house of* ——— *at the sign of the* ——— *in the said county, on the* ——— *day of* ——— *now next ensuing, at the hour of* ——— *in the forenoon of the same day, to testify your knowledge concerning*

the premisses. Hercin fail you not. Given under our hands and seals at ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of his said majesty king* George *the second.*

Judgment against the defendant.

AT *the time and place appointed by our summons on the information within written; that is to say, this* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord king* George *the second, at* ——— *in the county of* ——— *within mentioned; the within named defendant* A. O. *appeareth, and pleadeth that he is not guilty of the offence within mentioned; but upon a due and full hearing of the proofs made in and concerning the premisses, we do convict him thereof:* [Or,—*sufficient proof being made before us, that the within named defendant* A. O. *hath had due notice of the within written information, and that he was duly summoned to appear before us here this day; and he, in contempt of the said summons, neglecting now to appear, and making default therein; and the fact and offence in the within written information being now fully proved before us, we do convict him thereof:*] *It is therefore now here considered and adjudged by us the said justices, that the said defendant hath forfeited the within mentioned sum of* 50 l. *(which we mitigate and lessen to the sum of* 7 l.) *to be distributed as the law directs. Given under our hands and seals, at* ——— *aforesaid, this* ——— *day of* ——— *in the* ——— *year of the reign of our said sovereign lord king* George *the second.*

Warrant of distress.

Westmorland, { To A. E. and B. E. officers of excise, and to either of them, and to such other person and persons as they or either of them shall take to his or their assistance.

WE *whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of* ——— *do in his said majesty's name, authorize and command you and every of you, that upon the brewing vessels and utensils for brewing used by* A. O. *of* ——— *in the said county, innkeeper, in the brewhouse and place where he usually brews, at* ——— *aforesaid, and upon the goods and chattels of the said* A. O. *you or any of you do levy the sum of* 20 l. *of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* 50 l. *of like money recovered against him by* A. I. *gentleman, who prosecuted as well for our sovereign lord the king, as for himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he the said* A. O. *is convicted before us; And for the levying thereof you are to seize, take, and carry away the said brewing vessels and utensils for brewing, and also the goods and chattels aforesaid; and if in* [*eight*] *days next after such seizure, the said sum of* 20 l. *together with the reasonable charges of taking and keeping the said vessels and utensils, goods and chattels, shall not be paid, then, and in such case (after the expiration of the said* ——— *days) you are to make sale thereof,*

or

or of so much thereof as shall be sufficient for the purposes herein specified; which said sum of 20 l. *when so levied as aforesaid, you are forthwith to pay to the collector of excise for the collection called* ——— *collection, for the time being; to be by him distributed and answered, according to the statute in such case made and provided: and after levying thereof, the overplus which shall remain of the said brewing vessels and utensils for brewing, and of the said goods and chattels, and of the money arising by such sale, you are to return unto the said* A. O. *upon demand, the reasonable charges of taking, keeping, and selling the said vessels and utensils, goods and chattels, being out of the said overplus money first deducted.*

And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case there cannot be found sufficient to raise the sum last mentioned, then and in such case you are, by a return to this our warrant, forthwith to certify the same to us the said justices. Given under our hands and seals at ——— *in the said county, this* ——— *day of* ——— *in the* ——— *year of his said majesty's reign, and in the year of our lord* 1754.

Return of the want of distress.

Westmorland. I A. E. *one of the officers of his majesty's duties of excise, do hereby certify to* J. P. *and* K. P. *esquires, two of his said majesty's justices of the peace for the said county, that by virtue of a warrant from the said justices to levy the the sum of* 20 l. *upon the brewing vessels and utensils for brewing used by* A. O. *in his usual place of brewing, and upon his goods and chattels, I have made diligent search for such vessels, utensils, goods, and chattels; and that I can find none such; and that I do not know, nor can find, that the said* A. O. *hath any goods or chattels whatsoever. Witness my hand hereunto set, at* ——— *in the said county, this* ——— *day of* ——— *in the year of our lord* 1754.

Warrant of commitment.

Westmorland. { To A. E. and B. E. officers of excise, and to either of them, and to such person or persons as they or either of them shall take to their assistance: And to the gaoler or keeper of such prison to whom these presents shall come.

WHEREAS *we whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of* ——— *by our warrant under our hands and seals, bearing date the* ——— *day of* ——— *now instant, did require and command you the said* A. E. *and* B. E. *or either of you, to levy the sum of* 20 l. *therein mentioned on the brewing vessels and utensils for brewing, used by* A. O. *of* ——— *in the said county, innkeeper, and upon the goods and chattels of the said* A. O. *And whereas you the said* A. E. *and* B. E. *by a return and certificate under your hands, bearing date the* ——— *day of* ——— *now instant, have certified to us, that having made diligent search for such brewing vessels and utensils for*

brewing, and for such goods and chattels, you cannot find any whereon to levy the said 20 l. *or any part thereof, and that no such vessels, utensils, goods, or chattels can be found: We therefore the said justices do in his majesty's name hereby authorize, require, and command you, every, or any of you, to take and arrest the body of him the said* A. O. *and forthwith to carry him to the gaol or prison of and for the county or place where you shall so take and arrest him; and him, together with a duplicate of this our warrant, there to deliver into the custody of the gaoler or keeper of the said gaol or prison of and for the said county or place, there to remain in safe custody until he shall satisfy and pay the said sum of* 20 l. *of lawfully money of* Great Britain, *by us mitigated and lessened from the sum of* 50 l. *of like money, by us the said justices adjudged against him, upon an information exhibited against him before us by* A. I. *gentleman, as well on the behalf of his said majesty, as of himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables, and other his majesty's officers, are hereby authorized and required, to be aiding and assisting to you in the due execution hereof. And the gaoler and gaolers, keeper and keepers of such prison or gaol to which you shall so carry the body of the said* A. O. *is and are hereby authorized and required, to receive into his or their custody the body of the said* A. O. *and the same to keep in safe custody until he shall satisfy and pay the said sum of* 20 l. *before mentioned. And for your, any, or either of your doing as is before respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given under our hands and seals at* ——— *in the said county, this* ——— *day of* ——— *in the* ——— *year of the reign of his said majesty, and in the year of our lord* 1754.

More precedents it is not necessary to add, since the officers of excise are generally well furnished with printed forms drawn by good advice.

Note; These statutes abovementioned, relating to this title, are but temporary, and have their continuance as follows,

8 *G. c.* 18. Spirituous liquors. By the 8 *G.* 2. *c.* 33. to *June* 1. 1754, and from thence to the end of the then next session of parliament.

5 *G.* 2. *c.* 24. Coffee. By the 25 *G.* 2. *c.* 35. to *March* 25. 1758, and from thence to the end of the then next session of parliament.

6 *G.* 2. *c.* 37. Hop-binds. By the 24 *G.* 2. *c.* 57. to *Sep.* 1. 1757, &c.

15 *G.* 2. *c.* 25. Rum. By the 23 *G.* 2. *c.* 26. to *Sep.* 29. 1757, &c.

19 *G.* 2. *c.* 34. Outlawed smugglers. By the 26 *G.* 2. *c.* 32. to *June* 24. 1758, &c.

Execution.

1. WHERE a perſon attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution ſhould not be awarded againſt him; if he deny that he is the ſame perſon, it ſhall be immediately tried by a jury returned for that purpoſe. 2 *Haw.* 463.

2. The court may command execution to be done, without any writ. 2 *Haw.* 463.

3. In fixed and ſtated judgments, the law makes no diſtinction between a peer and a commoner, or between a common and ordinary caſe, and one attended with extraordinary circumſtances; for which reaſon it was adjudged in *Felton*'s caſe, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the ſentence that his body ſhould be hanged in chains, but that the body after execution being at the king's diſpoſal, might be hanged in chains, or otherwiſe ordered as the king ſhould think fit. 2 *Haw.* 443.

4. But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading; whereby the judgment is not altered, but part of it remitted. 2 *H. H.* 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw.* 463.

Exigent. See Proceſs.

Extortion.

IT is ſaid, that extortion, in a large ſenſe, ſignifies any oppreſſion under colour of right; but that, in a ſtrict ſenſe, it ſignifies the taking of money by any officer, by colour of his office, either where none at all is due, or not ſo much is due, or where it is not yet due. 1 *Haw.* 170.

And by the ſtatute of the 3 *Ed.* 1. *c.* 26. (which is only in affirmance of the common law) *No ſheriff, nor other the king's officer, ſhall take any reward to do his office, but ſhall be paid of that which they take of the king; and he that ſo doth, ſhall yield twice as much, and ſhall be puniſhed at the king's pleaſure.*

No ſheriff nor other the king's officer] Under theſe words, the law beginning with the *ſheriffs*, are underſtood eſcheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whoſe offices were inſtituted before the making of this act, which do any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, or for the king's ſervice. 2 *Inſt.* 209.

Alſo the juſtices of the peace, whoſe office was inſtituted after this act, are bound by their oath of office, to take nothing for their office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.

And generally, no publick officer ſhall take any other fees or rewards, for doing any thing relating to his office, than ſome ſtatute in force gives him, or elſe as hath been antiently and accuſtomably taken: and if he do otherwiſe, he is guilty of extortion. *Dalt. c.* 41.

Shall take any reward] Therefore by this ſtatute, they can at this day take no more for doing their office, than hath been ſince allowed to them by authority of parliament. 2 *Inſt.* 210.

And all preſcriptions which have been contrary to this ſtatute, and to the common law in affirmance of which it is made, have been always holden to be void. 1 *Haw.* 170.

And it hath been reſolved, that a promiſe to pay them money for the doing of a thing, which the law will not ſuffer them to take any thing for, is merely void. 1 *Haw.* 171.

To do his office] It is not ſaid, that he ſhall take no reward generally, but no reward to do his office: Thus the fee of 20*d.* called bar fee, time out of mind taken by the ſheriff of every priſoner that is acquitted, is not againſt this ſtatute; for it is not taken for doing his office. 2 *Inſt.* 210.

But there ſeems to be no neceſſity for this diſtinction, for it cannot be intended to be the meaning of the ſtatute to reſtrain the courts of juſtice, in whoſe integrity the law always repoſes the higheſt confidence, from allowing reaſonable fees for the labour and attendance of their officers: for the chief danger of oppreſſion is from officers being left at their liberty to ſet their own rates on their labour, and make their own demands; but there cannot be ſo much fear of theſe abuſes, while they are reſtrained to known and ſtated fees, ſettled by the diſcretion of the courts, which will not ſuffer them to be exceeded, without a proper reſentment. 1 *Haw.* 171.

But in the eccleſiaſtical court, a perſon was libelled againſt for fees, and upon motion a prohibition was granted, for that it was holden that no court hath a power to eſtabliſh fees: the judge of a court may think them reaſonable, but that is not binding; but if on a *quantum meruit* a jury think them reaſonable, then they become eſtabliſhed fees. 1 *Salk.* 333.

The fees in ſeſſions, for traverſing, trying, or diſcharging indictments, diſcharging recognizances, and the like, do vary according to different cuſtoms in different places. *Dalt. c.* 41.

Shall yield twice as much] At the common law this offence is ſeverely puniſhable at the king's ſuit, by fine and impriſonment, and alſo by a removal from the office in the execution whereof it was committed. And this ſtatute doth add a greater penalty than the common law did give; for hereby the plaintiff ſhall recover his double damages. 2 *Inſt.* 210. 1 *Haw.* 171.

And by the 31 *El. c.* 5. Actions for extortion may be laid in any county.

At the king's pleasure] That is, by the king's justices, before whom the cause depends. 2 *Inst.* 210.

Indictment for extortion in a gaoler.

THE *jurors for our lord the king, upon their oath present, that* A. O. *late of* ——— *in the said county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was taken upon suspicion of having committed a certain felony, by* ——— *constable of* ——— *in the said county, by virtue of a warrant directed to the said* ——— *under the hand and seal of* Robert Bolton, *doctor of laws, then and yet one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and was on the same day and year committed by him the said* Robert Bolton, *to* A. G. *keeper of the gaol of our said sovereign lord the king at* ——— *in the said county, under the custody of him the said* A. G. *to be safely kept, upon suspicion of the felony aforesaid, and the said* A. O. *was detained in that prison under the custody of the said* A. G. *from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said felony; nevertheless the said* A. G. *in no wise regarding the statute in that case made, and the penalty therein contained, did on the* ——— *day of* ——— *at* ——— *aforesaid, in the said county, demand and receive* ——— *pounds of lawful money of* Great Britain *of and from the said* A. O. *for ease and favour in the said gaol for the said time, in contempt of our said sovereign lord the king, and against the form of the statute aforesaid, and against the peace of our said sovereign lord the king, his crown and dignity.*

Indictment for extortion of a bailiff.

THE *jurors for our lord the king upon their oath present, that* A. B. *late of* ——— *in the said county, yeoman, being bailiff of the hundred of* ——— *in the said county, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *in the said county, by pretext and colour of his said office, did unjustly and by extortion take and extort* 5 s. *of one* A. I. *of* ——— *in the said county, yeoman, one of the freeholders qualified to serve upon juries in the said county, to excuse the said* A. I. *from attending or appearing at the assizes that were then next to be holden in and for the said county, when in fact the said* A. I. *was not returned by the sheriff of the said county in any panel of jurors, and also when indeed no such sum of money was due to the said* A. B. *for his fee for excusing the attendance or appearance of the said* A. I. *at the assizes aforesaid, to the evil example of other offenders, to the great damage of him the said* A. I. *and against the peace of our said sovereign lord the king, his crown and dignity.*

False tokens. See Cheat.

Fast days.

BY the 2 & 3 *Ed.* 6. *c.* 19. for the encouragement of the fisheries, and the increase of cattle; and the 5 *El. c.* 5. intitled, an act touching political constitutions for the maintenance of the navy; and by the 35 *El. c.* 7. it is enacted as follows:

No person shall eat any manner of flesh on any *Friday* or *Saturday*, or the embring days, or in *Lent*, nor on any other day commonly reputed a fish day; on pain of forfeiting 20 *s.* or being imprisoned one month.

And every person in whose house any flesh shall be eaten on fish days, and not discloſing the same to a publick officer having authority to punish the same; shall forfeit 13 *s.* 4 *d.*

Which said forfeitures shall be, one third to the king, one third to the informer, and one third to the common use of the parish where the offence shall be committed; to be levied by the churchwardens after conviction.

Prosecution to be at the assizes or sessions, in three months after the offence committed.

But nothing herein shall extend to any person having the king's licence; or being in great age, and weakness thereby; or sick, or notably hurt; or woman with child, or lying in child bed, for eating of such one kind of flesh as she shall have great lust unto; or in prison; nor to the king's lieutenant, deputy, or captain in his armies, but the same may eat, or license their soldiers to eat flesh for lack of other victual; nor to persons licensed by the archbishop of *Canterbury*.

And such licences shall be on condition, that the person licensed shall within six days after *Candlemas*, pay to the poor box where he dwells, if he be a lord 26 *s.* 8 *d.* a knight 13 *s.* 4 *d.* and all others 6 *s.* 8 *d.*

But sick persons may be licensed by the bishop of the diocese, or by the parson, vicar, or curate of the parish, or (if there be none, or he be wilful) of the next parish; and if the sickness continues above eight days, the licence shall be registred in the church book, with the knowledge of a churchwarden; and the curate shall have 4 *d.* for entry; and the same to endure no longer than such sickness.

And no licence shall extend to the eating any beef at any time of the year, nor veal from *Sep.* 29. to *May* 1. in any year.

And persons licensed (except for sickness) shall for every dish of flesh at their table, have one dish of sea fish.

Fees. See Extortion.

Felo de se. See Homicide.

Felony, Miſpriſion of felony, and Theftbote.

I. Felony.

FELONY is generally ſuppoſed to come from the *Saxon fell*, which ſignifieth fierce, or cruel; of which the verb *fell* ſignifieth to throw down or demoliſh; and the ſubſtantive of that name is uſed to ſignify a mountain rough and uncultivated. But the ſame word, with a little variation, runneth through moſt of the *European* languages, and ſignifieth more generally an offence at large; and the *Saxon* word *fællan* ſignifieth to offend, and *fælniſſe* an offence or *failure:* and although *felony*, as it is now become a technical term, ſignifieth in a more reſtrained ſenſe an offence of an high nature, yet it is not limited to *capital* offences only, but ſtill retaineth ſomewhat of this larger acceptation; for petit larceny is felony, altho' it is not capital.

It would ſwell this title near to the bigneſs of half the book, to ſet down every thing which may be comprehended under this word *felony:* therefore it is neceſſary to refer the conſideration of the ſeveral particular kinds of felonies to their reſpective titles; as for inſtance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and eſpecially the law relating to ſtolen goods of all kinds belongeth to title *Larceny*.

The method of bringing a felon to juſtice from the firſt commiſſion of the felony, to his condemnation and execution, is treated of under the ſeveral titles of *Hue and cry*, *Arreſt*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Mute*, *Confeſſion*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Tranſportation*, *Execution*. And the courſe and whole procedure of trying an offender, is treated of under title *Seſſions*.

So that there is nothing left for this place, but to take notice of one circumſtance which is common to all felonies in general, and that is, concerning the charges of proſecution:

By the 3 *J. c.* 10. The felon ſhall pay the charges of his carrying to gaol, if able; to be levied by diſtreſs by warrant of one juſtice.

And by the ſtatute of the 27 *G.* 2. *c.* 3. if he is not able, the ſame ſhall be paid, by order of ſuch juſtice, by the treaſurer out of the county rates; and in *Middleſex* by the overſeers of the poor where the party was apprehended.

And by the 25 *G.* 2. *c.* 36. the court, before whom any perſon hath been tried and convicted of any grand or petit larceny, or other felony, may at the prayer of the proſecutor, and on conſideration of his circumſtances, order the treaſurer of the county in which the offence ſhall have been committed, to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble; and the clerk of aſ-

ſize or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on paying 1 *s.* and the treaſurer ſhall pay the ſame on ſight, and be allowed the ſame in his accounts.

And by the aforeſaid act of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on recognizance to give evidence, the court may order the treaſurer to pay him ſuch ſum as they ſhall think reaſonable, for his time, trouble, and expences; which order the proper officer ſhall make out for the fee of 6 *d.* Except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

II. Miſpriſion of felony.

Miſpriſion of felony (from the *French* word *meſpris*, a neglect or contempt, 3 *Inſt.* 36.) is the concealing of a felony which a man knows, but never conſented to: for if he conſented, he is either principal or acceſſary in the felony, and conſequently guilty of miſpriſion of felony and more. 1 *H. H.* 374.

For it is ſaid, that every felony includes miſpriſion of felony, and may be proceeded againſt as a miſpriſion only, if the king pleaſes. 1 *Haw.* 125.

The puniſhment of miſpriſion of felony in a common perſon, is fine and impriſonment; in an officer, as ſheriff or bailiff of liberties, impriſonment for a year, and ranſom at the king's pleaſure, by the ſtatute of 3 *Ed.* 1. *c.* 9.

If any perſon will ſave himſelf from the crime of miſpriſion, he muſt diſcover the offence to a magiſtrate with all ſpeed that he can. 3 *Inſt.* 140.

Miſpriſion, in a larger ſenſe, is uſed to ſignify every conſiderable miſdemeanor, which hath not a certain name given to it in the law.

III. Theftbote.

Theftbote (from the *Saxon* words *theft*, and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends, not to proſecute. 1 *Haw.* 125.

But the bare taking of one's own goods again, which have been ſtolen, is no offence, unleſs ſome favour be ſhewn to the thief. 1 *Haw.* 125.

This offence is very nearly allied to felony, and is ſaid to have been anciently puniſhed as ſuch; but at this day it is puniſhable only with ranſom and impriſonment, unleſs it were accompanied with ſome degree of maintenance given to the felon, wich makes the party an acceſſary after the fact. 1 *Haw.* 125.

Feme covert. See **Wife.**

Fences. See **Wood.**

Fern. Burning of it in foreſts. See **Burning.**

Fire. See **Burning.**

Fire in London.

THE acts relating thereto are,
6 *An.* *c.* 31.
7 *An.* *c.* 17.
11 *G.* *c.* 28.

Fireworks.

1. IT ſhall not be lawful for any perſon to make or cauſe to be made, or to ſell or expoſe to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; or to permit the ſame to be caſt or fired from his houſe or other place thereto belonging, into any publick ſtreet or road; or to throw or fire, or be aiding in throwing or firing the ſame, in any publick ſtreet, houſe, ſhop, river, or highway; and every ſuch offence ſhall be adjudged a common nuſance. 9 & 10 *W.* *c.* 7. *ſ.* 1. Fireworks a nuſance.

2. And if any perſon ſhall make or cauſe to be made, or give, ſell, or offer to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; he ſhall on conviction before one juſtice, or chief magiſtrate, by confeſſion, or oath of two witneſſes, forfeit 5 *l.* half to the poor, and half to the proſecutor; to be levied by diſtreſs, by warrant of ſuch juſtice or chief magiſtrate. 9 & 10 *W.* *c.* 7. *ſ.* 2. Making or ſelling rockets.

3. And if any perſon ſhall permit any the ſame to be caſt or fired, from his houſe or other place thereto belonging, into any publick ſtreet or road, or any other houſe or place; he ſhall forfeit 20 *s.* in like manner. 9 & 10 *W.* *c.* 7. *ſ.* 2. Suffering rockets to be fired.

4. And if any perſon ſhall caſt or fire, or be aiding in caſting or firing any the ſame, into any publick ſtreet, houſe, ſhop, river or highway; he ſhall forfeit 20 *s.* in like manner: and if he ſhall not immediately on conviction pay to the juſtice the ſaid forfeiture for the uſes aforeſaid, he ſhall commit him to the houſe of correction to be kept to hard labour for any time not exceeding one month, unleſs he ſhall ſooner pay the forfeiture. 9 & 10 *W.* *c.* 7. *ſ.* 3. Firing rockets.

5. But nothing herein ſhall extend to the officers of the ordnance, or artillery company. 9 & 10 *W.* *c.* 7. *ſ.* 4, 5. Exception.

Fiſh and fiſhing. See **Game.**
Fiſh ſalted. See **Exciſe.**
Flight. See **Forfeiture.**

Forcible entry and detainer.

FORCE, in the common law, is moſt commonly taken in ill part, for unlawful violence. 1 *Inſt.* 161.

It ſeems that at the common law, a man diſſeiſed of any lands or tenements, if he could not prevail by fair means, might lawfully regain the poſſeſſion thereof by force, unleſs he were put to a neceſſity of bringing his action, by having neglected to re enter in due time: And it ſeems certain, that even at this day, he who is wrongfully diſpoſſeſſed of his *goods*, may juſtify the retaking of them by force from the wrong doer, if he refuſe to re-deliver them; for the violence which happens thro' the reſiſtance of the wrongful poſſeſſor, being originally owing to his own fault, gives him no juſt cauſe of complaint, inaſmuch as he might have prevented it by doing as he ought. 1 *Haw.* 140.

But this indulgence of the common law, in ſuffering perſons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the publick peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and alſo by force to retain their wrongful poſſeſſions, it was thought neceſſary by many ſevere laws to reſtrain all perſons from the uſe of ſuch violent methods of doing themſelves juſtice. 1 *Haw.* 141.

However even at this day, in an *action* of forcible entry grounded on thoſe laws, if the defendant make himſelf a title which is found for him, he ſhall be diſmiſſed without any inquiry concerning the force; for howſoever he may be puniſhable *at the king's ſuit*, for doing what is prohibited by ſtatute, as a contemner of the laws, and diſturber of the peace, yet he ſhall not be liable to pay any damages for it to the plaintiff, whoſe injuſtice gave him the provocation in that manner to right himſelf. 1 *Haw.* 141.

Since therefore offences of this nature are made ſuch, not by the common law, but by ſtatute (after having premiſed, that *they who keep poſſeſſion with force, in lands and tenements, whereof they or their anceſtors, or they whoſe eſtate they have in the ſame, have continued their poſſeſſion in the ſame, by three whole years next before without interruption, ſhall not be indamaged by force of any of the ſtatutes concerning forcible entry*, 8 H. 6. c. 9. ſ. 7. 1 Haw. 152.) I ſhall conſider thoſe ſeveral ſtatutes, with the interpretation that hath been put upon them, under the following heads:

I. What

I. What is a forcible entry.
II. What is a forcible detainer.
III. How the ſame are puniſhable by action at law.
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I. What is a forcible entry.

By the 5 *R.* 2. *c.* 8. *None ſhall make any enty into any lands or tenements (or benefices of holy church,* 15 R. 2. c. 2. *or other poſſeſſions,* 8 H. 6. c. 9. ſ. 2.) *but where entry is given by the law; and in ſuch caſe not with ſtrong hand, nor with multitude of people, but only in peaceable and eaſy manner; on pain of impriſonment and ranſom at the king's will.*

Or other poſſeſſions] It ſeems clear, that no one can come within the danger of theſe ſtatutes, by a violence offered to another in reſpect of a *way*, or ſuch like eaſement, which is no poſſeſſion. And there ſeems to be no good authority, that an indictment will lie in this caſe for a *common*, or *office*. 1 *Haw.* 146.

Not with ſtrong hand, nor with multitude of people] It ſeems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for ſuch like purpoſe, without doing any act, which either expreſsly or impliedly amounts to a claim of ſuch lands, he cannot be ſaid to make an entry thereinto. 1 *Haw.* 144.

But it ſeemeth, that if a perſon enter into another man's houſe, or ground, either with apparent violence offered to the perſon of any other, or furniſhed with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, graſs, or other goods, or to fell or crop wood, or do any other like treſpaſs, and tho' he do not put the party out of his poſſeſſion, yet it ſeemeth to be a forcible entry. *Dalt. c.* 126.

But if the entry were peaceable, and after ſuch entry made, they cut or take away any other man's corn, graſs, wood, or other goods, without apparent violence or force; tho' ſuch acts are counted a diſſeiſin with force, yet they are not puniſhable as forcible entries. *Dalt. c.* 126.

But if he enter peaceably, and there ſhall by force or violence cut or take away any corn, graſs, or wood, or ſhall forcibly or wrongfully carry away any other goods there being; this ſeemeth to be a forcible entry puniſhable by theſe ſtatutes. *Dalt. c.* 126.

So alſo ſhall thoſe be guilty of a forcible entry, who having an eſtate in land, by a defeaſible title, continue with force in the poſ-

ſeſſion

ſeſſion thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* 145.

But he who barely agrees to a forcible entry made to his uſe, without his knowledge or privity, ſhall not be adjudged to make an entry within theſe ſtatutes, becauſe he no way concurred in, or promoted the force. 1 *Haw.* 145.

And, in general, it ſeemeth clear, that to denominate the entry forcible, it ought to be accompanied with ſome circumſtances of actual *violence*, or *terror*; and therefore that an entry which hath no other force than ſuch as is implied by the law, in every treſpaſs whatſoever, is not within theſe ſtatutes. 1 *Haw.* 145.

As to the matter of *violence*; it ſeems to be agreed, that an entry may be forcible, not only in reſpect of a violence actually done to the perſon of a man, as by beating him if he refuſe to relinquiſh his poſſeſſion, but alſo in reſpect of any other kind of violence in the manner of the entry, as by breaking open the doors of a houſe, whether any perſon be in it or not, eſpecially if it be a dwelling houſe, and perhaps alſo by any act of outrage after the entry, as by carrying away the party's goods; but it ſeems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *ſtrong hand*, or *multitude of people*; and it hath been holden, that an entry into a houſe thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145.

In reſpect of the circumſtances of *terror*; it is to be obſerved, that wherever a man, either by his behaviour or ſpeech, at the time of his entry, gives thoſe who are in poſſeſſion juſt cauſe to fear, that he will do them ſome bodily hurt, if they will not give way to him, his entry is eſteemed forcible, whether he cauſe ſuch a terror, by carrying with him ſuch an unuſual number of attendants, or by arming himſelf in ſuch a manner, as plainly intimates a deſign, or by actually threatning to kill, maim, or beat thoſe who ſhall continue in poſſeſſion, or by giving out ſuch ſpeeches, as plainly imply a purpoſe of uſing force, as if one ſay that he will keep his poſſeſſion in ſpite of all men, or the like. 1 *Haw.* 145.

But it ſeems that no entry ſhall be judged forcible, from any threatning to ſpoil another's *goods*, or to deſtroy his cattle, or to do him any other ſuch like damage, which is not perſonal. 1 *Haw.* 146.

However it is clear, that it may be committed by a ſingle perſon, as well as by twenty. 1 *Haw.* 146.

But nevertheleſs all thoſe who accompany a man, when he makes a forcible entry, ſhall be adjudged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It ſeemeth certain, that the ſame circumſtances of violence or terror which will make an entry forcible, will make a detainer forcible

forcible alſo. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw.* 146.

III. How they are puniſhable by action at law.

If any perſon be put out or diſſeiſed of any lands or tenements in forcible manner, or put out peaceably, and after holden out with ſtrong hand; the party grieved ſhall have aſſize of novel diſſeiſin, or a writ of treſpaſs againſt the diſſeiſor; and if he recovers, he ſhall have treble damages, and the defendant moreover ſhall make fine and ranſom to the king. 8 H. 6. c. 9. ſ. 6.

The party grieved ſhall have aſſize &c.] But this action, being at the ſuit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entreth with force, where his entry is lawful, he ſhall not be puniſhed by way of action; but yet he may be indicted upon the ſtatute, for the indictment is for the force, and for the king, and he ſhall make fine to the king, altho' his right be never ſo good. *Dalt.* c. 129.

Treble damages] And this he ſhall recover, as well for the mean occupation, as for the firſt entry: And albeit he ſhall recover treble damages, yet he ſhall recover coſts, which ſhall be trebled alſo; for the word *damages* includeth coſts of ſuit. 1 *Inſt.* 257.

IV. How puniſhable at the general ſeſſions.

The party grieved, if he will loſe the benefit of his treble damages and coſts, may be aided and have the aſſiſtance of the juſtices at the general ſeſſions, by way of indictment (A) on the ſtatute of 8 *H.* 6. Which being found there, he ſhall be reſtored to his poſſeſſion, by a writ of reſtitution granted out of the ſame court to the ſheriff. *Dalt.* c. 129.

In the caption of which indictment, it will be ſufficient to ſay, *juſtices aſſigned to keep the peace of our lord the king*, without ſhewing that they have authority to hear and determine felonies and treſpaſſes; for the ſtatute enables all juſtices of the peace, as ſuch, to take ſuch indictments. 1 *Haw.* 147.

And the tenement in which the force was made, muſt be deſcribed with convenient certainty; and muſt ſet forth that the defendant actually entred; and ouſted the party grieved; and continueth his poſſeſſion at the time of finding the indictment; otherwiſe he cannot have reſtitution, becauſe it doth not appear that he needeth it. 1 *Haw.* 147, 149, 150.

But if a man's wife, children, or ſervants do continue in the houſe or upon the land, he is not ouſted of his poſſeſſion; but his cattle being upon the ground, do not preſerve his poſſeſſion. *Dalt.* c. 132.

An indictment for forcible entry was quaſhed, for not ſetting forth, that the party was ſeiſed or diſſeiſed, or what eſtate he had in the tenement; for if he had only a term for years, then the entry

entry muſt be laid, into the freehold of *A.* in the poſſeſſion of *B.* 3 *Salk.* 169.

V. How puniſhable by one juſtice.

1. For a more ſpeedy remedy, the party grieved may complain to any one juſtice; or to a mayor, ſheriff, or bailiff, within their liberties. 8 *H.* 6. *c.* 9.

2. But altho' one juſtice alone may proceed in ſuch caſes, yet it may be adviſable for him, if the time for viewing the force will ſuffer it, to take to his aſſiſtance one or two more juſtices.

3. Concerning which power of one juſtice, it is enacted as follows:

After complaint made to ſuch juſtice, by the party grieved, of a forcible entry made into lands, tenements, or other poſſeſſions, or forcible holding thereof, he ſhall within a convenient time, at the coſts of the party grieved (without any examining or ſtanding upon the right or title of either party) *take ſufficient power of the county, and go to the place where ſuch force is made.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2. Dalt. c. 44.

Complaint —— *by the party grieved*] Yet theſe words do not inforce any neceſſity of ſuch a complaint; for it is holden, that the juſtice may and ought to proceed, upon any information or knowledge thereof whatſoever, tho' no complaint at all be brought unto him, by any party grieved thereby. *Lamb.* 147.

Power of the county] All people of the county, as well the ſheriffs as other, ſhall be attendant on the juſtices, to arreſt the offenders; on pain of impriſonment and fine to the king. 15 *R.* 2. *c.* 2.

4. And if the doors be ſhut, and they within the houſe ſhall deny the juſtice to enter, it ſeems he may break open the houſe, to remove the force. *Dalt. c.* 44.

5. And if after ſuch entry made, the juſtice *ſhall find ſuch force; he ſhall cauſe the offenders to be arreſted.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2.

6. He ſhall alſo *take away their weapons and armour, and cauſe them to be appraiſed, and after to be anſwered to the king as forfeited, or the value thereof.* 2 Ed. 3. c. 3.

7. Alſo ſuch juſtice ought to *make a record* (B) *of ſuch force by him viewed*; which record ſhall be a ſufficient conviction of the offenders, and the parties ſhall not be allowed to traverſe it: And this record, being made out of the ſeſſions, by a particular juſtice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and the other part he may keep himſelf. For this view of the force by the juſtice, being a judge of record, maketh his record thereof, in the judgment of the law, as ſtrong and effectual, as if the offenders had confeſſed the force before him; and touching the reſtraining of traverſe, more effectual, than if the force had been found by a jury, upon the evidence of others. (That is,

as

as to the fine and impriſonment, but not as to reſtitution.) 15 *R.* 2. *c.* 2. *Dalt. c.* 44.

8. And the offenders, being arreſted (as before is ſaid), *ſhall be put in the next gaol* (C) *there to abide convict by the record of the ſame juſtice, until they have made fine and ranſom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is ſaid, that the juſtice hath no power to commit the offender to gaol, unleſs he do it upon his own view of the fact, and not upon the jury finding the ſame afterwards. *Dalt. c.* 44. 1 *Haw.* 142.

And if ſuch offenders, being in the houſe at the coming of the juſtice, ſhall make no reſiſtance, nor make ſhew of any force, then the juſtice cannot arreſt or remove them at all upon ſuch view. *Dalt. c.* 44.

But howſoever, if the force be found afterwards, by the inquiry of the jury, the juſtice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after ſend them to the gaol, until they have found ſureties for the peace. *Dalt. c.* 44.

Note; Mr. *Dalton* in this place ſays *good behaviour*, which I have preſumed to alter to *the peace*, as deeming it much the ſafer; and not being ſufficiently ſatisfied concerning the power of a juſtice of the peace to bind to the good behaviour in the like caſes, which power Mr. *Dalton* hath enlarged more than all other authors, without any aſſiſtance from the commiſſion of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] *H.* 1 *G.* 2. *K.* and Sir *Edm. Ellewel.* He was brought up upon a *habeas corpus*, with a return of the cauſe of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to diſcharge him upon exceptions to the commitment, the court refuſed to enter into the conſideration of them, till the conviction was likewiſe regularly removed before them. But by conſent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine ſet by the juſtices, and it was therefore moved to be quaſhed. It was agreed on both ſides, that there ſhould be a fine; but it was inſiſted, that it being now before the king's bench by a *certiorari*, they might ſet the fine. But by the court, We are not to execute the judgment of an inferior court. The conviction is to be upon view, and they who view the nature of the force are the propereſt judges what fine to ſet; and though a *certiorari* ſhould come before the fine is ſet, yet it would be no contempt in the juſtices to compleat their judgment by ſetting one. *Lambard* indeed was of opinion, that the juſtices could not ſet the fine at all; but upon what foundation we can never imagine. The juſtices are not bound to do it upon the ſpot, but may take a reaſonable time to conſider of the fine; becauſe by the words of the act, the commitment is to be, till he has paid the fine. The conviction muſt be quaſhed,

and the defendant discharged. *Str.* 794. L. *Raym.* 1515. *Sess. C. V.* 1. 289.

And the same was likewise solemnly resolved in *Leighton*'s case; and that the justice may assess the same, either before the conviction or after. 1 *Haw.* 142.

And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for his majesty's use. *Dalt. c.* 44.

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt. c.* 44.

9. And so much concerning removing the force: But the party ousted cannot be restored to his possession by the justice's view of the force; nor unless the same force be found by the inquiry of a jury.

Concerning which it is enacted as follows: *And tho' that the persons making such entry be present, or else departed before the coming of the justice; he may notwithstanding in some good town next to the tenements so entred, or in some other convenient place by his discretion* (and that, tho' he go not to see the place where the force is; *Dalt. c.* 44.) *have power to inquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force.* 8 H. 6. c. 9. s. 3.

10. In order to which, *the justice shall make his precept* (D) *to the sheriff, commanding him in the king's behalf, to cause to come before him, sufficient and indifferent persons, dwelling next about the lands so entred, to inquire of such entries; whereof every man shall have lands or tenements of* 40s. *a year, above reprizes. And the sheriff shall return issues on every of them, at the day of the first precept returnable* 20s. *and at the second day* 40s. *and at the third day* 100s. *and at every day after double. And the sheriff making default, shall on conviction before the same justice, or before the judge of assize, forfeit* 20l. *half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the king.* 8 H. 6. c. 9. s. 4, 5.

Before the same justice] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king. *Dalt. c.* 44.

11. And the defendant also, if he is not present, ought to be called to answer for himself; for it is implied by natural justice, in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. 1 *Haw.* 154.

12. And it seems to be settled at this day, that if the defendant tender a *traverse* of the force, the justice ought not to make any restitution, till the traverse be tried. 1 *Haw.* 154.

13. The defendant may also by the 31 *El. c.* 11. plead *three years possession*; whereby it is enacted, that *no restitution upon an*

indictment of forcible entry, or holding with force, ſhall be made, if the perſon indicted have had the occupation, or been in quiet poſſeſſion for three years together next before the indictment found, and his eſtate therein not determined; and reſtitution ſhall ſtay till that be tried: and if it is found againſt the party indicted, he ſhall pay ſuch coſts and damages as the judges or juſtices ſhall aſſeſs; to be recovered as coſts and damages in judgments on other actions.

And it hath been holden, that the plea of ſuch poſſeſſion is good, without ſhewing under what title, or of what eſtate ſuch poſſeſſion was; becauſe it is not the title, but the poſſeſſion only, which is material in this caſe. 1 *Haw.* 152.

14. And it was holden by the court in *Leighton*'s caſe, that if the defendant ſhall either traverſe the entry or the force, or plead that he has been three years in poſſeſſion, the juſtice may ſummon a jury for the trial of ſuch traverſe, for it is impoſſible to determine it upon view; and if the juſtice have no power to try it, it would be eaſy for any one to elude the ſtatute by the tender of ſuch a traverſe, and therefore by a neceſſary conſtruction the juſtice muſt needs have this power as incidental to what is expreſly given him. 1 *Haw.* 142.

15. And this traverſe muſt be tendred in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* muſt be awarded, a jury returned, the iſſue tried, a verdict found, and judgment given, and coſts and damages awarded; and there muſt be a record, which muſt be in writing, to do all this, and not a verbal plea. *Dalt. c.* 133. 1 *Haw.* 154.

16. Upon which traverſe tendred, the juſtice ſhall cauſe a new jury to be returned by the ſheriff, to try the traverſe; which may be done the next day, but not the ſame day. *Dalt. c.* 133.

17. And it ſeemeth, that he who tendreth the traverſe, ſhall bear all the charges of the trial; and not the king, or the party proſecuting. *Dalt. c.* 133.

18. And *if ſuch forcible entry or detainer be found* (E) *before ſuch juſtice, then the ſaid juſtice ſhall cauſe to reſeiſe* (F) *the lands and tenements ſo entred or holden, and ſhall reſtore the party put out, to the full poſſeſſion of the ſame.* 8 H. 6. c. 9. ſ. 3.

The ſaid juſtice] It ſeems to be agreed, that no other juſtices of the peace, except thoſe before whom the indictment ſhall be found, ſhall have any power either at the ſeſſions or out of it, to make any award of reſtitution. 1 *Haw.* 152.

Shall cauſe to reſeiſe] And the juſtice may break open the houſe by force, to reſeiſe the ſame; and ſo may the ſheriff do, having the juſtice's warrant. *Dalt. c.* 44.

Reſeiſe] That is, ſhall remove the force, by putting out all ſuch offenders as ſhall be found in the houſe, or upon the lands, that entred or held with force. *Dalt. c.* 130.

And ſhall reſtore the party put out] And this he may do in his own proper perſon; or he may make his warrant to the ſheriff to do it. *Dalt. c.* 44. 1 *Haw.* 151, 2.

19. And by 21 *J. c.* 15. it is enacted, *that ſuch judges, juſtices, or juſtice of the peace, as may give reſtitution unto tenants of any eſtate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's ſervice, tenants by elegit, ſtatute merchant and ſtaple, of lands or tenements by them ſo holden, which ſhall be entred upon by force, or holden from them by force.*

VI. How puniſhable on a certiorari.

Although regularly the juſtices only who were preſent at the inquiry, and when the indictment was found, ought to award reſtitution; yet if the record of the preſentment or indictment ſhall be certified by the juſtice or juſtices into the king's bench, or the ſame preſentment or indictment be removed and certified thither by *certiorari*, the juſtices of that court may award a writ of reſtitution to the ſheriff, to reſtore poſſeſſion to the party expelled: for the juſtices of the king's bench have a ſupreme authority in all caſes of the crown. *Dalt. c.* 44.

Alſo where upon a removal of the proceedings into the king's bench the conviction ſhall be quaſhed, the court will order reſtitution to the party injured. As in the caſe of *K.* and *Jones, M.* 8 *G.* A conviction of forcible entry was quaſhed for the old exception of *meſſuage* or *tenement*, by reaſon of the uncertainty; but the reſtitution was oppoſed, on an affidavit that the party's title (which was by leaſe) was expired ſince the conviction. But the court ſaid, they had no diſcretionary power in this caſe, but were bound to award reſtitution on quaſhing the conviction. *Str.* 474.

VII. How puniſhable as a riot.

If a forcible entry or detainer ſhall be made by three perſons or more, it is alſo a riot, and may be proceeded againſt as ſuch, if no inquiry hath before been made of the force. *Dalt. c.* 44.

A. Indictment for a forcible entry and detainer at common law.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, gentleman, and* B. O. *late of the ſame, yeoman, together with divers other malefactors and diſturbers of the peace of our ſaid lord the king (whoſe names to the jurors aforeſaid are yet unknown) on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *aforeſaid, in the county aforeſaid, unlawfully and injuriouſly did enter into a certain barn and a certain orchard, then and there being in the poſſeſſion of one* A. I. *and that the ſaid* A. O. *and* B. O. *together with the ſaid other malefactors, then and there, with force and arms, unlawfully and injuriouſly did expel, amove, and put out the ſaid* A. I. *from the*

the poſſeſſion of the ſaid barn and orchard, and the ſaid A. I. *ſo as aforeſaid expelled, amoved, and put out from the poſſeſſion of the ſaid barn and orchard, then and there, with force and arms, unlawfully and injuriouſly did keep out, and ſtill do keep out, to the great damage of him the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment on the ſtatute.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. I. *late of the pariſh of* ——— *in the county aforeſaid, gentleman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was poſſeſſed of a certain meſſuage, with the appurtenances, ſituate, lying, and being in* ——— *in the pariſh aforeſaid, in the county aforeſaid, for a certain term of years, then and ſtill to come, and unexpired, and being ſo poſſeſſed thereof, one* A. O. *late of* ——— *in the ſaid county, yeoman, afterwards, to wit, the ſaid* ——— *day of* ——— *in the year aforeſaid, into the ſaid meſſuage, with the appurtenances aforeſaid, in* ——— *aforeſaid, in the pariſh and county aforeſaid, with force and arms, and with ſtrong hand, unlawfully did enter, and the ſaid* A. I. *from the peaceable poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, then and there with force and arms, and with ſtrong hand, unlawfully did expel and put out, and the ſaid* A. I. *from the poſſeſſion thereof, ſo as aforeſaid, with force and arms, and with ſtrong hand, being unlawfully expelled and put out, the ſaid* A. O. *him the ſaid* A. I. *from the aforeſaid* ——— *day of* ——— *in the year aforeſaid, until the day of the taking this inquiſition, from the poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, with force and arms, and with ſtrong hand, unlawfully and injuriouſly then and there did keep out, and ſtill doth keep out, to the great damage of the ſaid* A. I. *againſt the peace of our ſaid lord the king, and againſt the form of the ſtatutes in that caſe made and provided.*

Note; If it is a freehold, then the party muſt be ſaid to be *ſeiſed* thereof in his demeſne as of fee; and conſequently he muſt be thereof *diſſeiſed:* otherwiſe if it is of a leſſer eſtate, of which he is not properly ſaid to be *ſeiſed*, but poſſeſſed thereof, at the will of the lord, according to the cuſtom of the manor, or the like, and then he muſt be *expelled, ejected, amoved,* or the like.

B. Record of a forcible detainer upon view.

Note, That the books upon the office of a juſtice of the peace do generally ſet forth, that the record ought to be in the preſent tenſe, and not in the time paſt (and herewith do accord the adjudged caſes in the court of king's bench, *Str.* 443.); yet nevertheleſs they do all exhibit the form of a record in the time paſt, and not in the preſent: Therefore I have taken the liberty to alter the ſame, from the record in L. *Raymond* of the conviction of

Sir *Edm. Elwell* aforeſaid, and others; adding the fine thereunto, for the want of which that conviction was quaſhed. And I have given the form of a record of a forcible *detainer*, rather than of a forcible *entry*, becauſe the juſtice for the moſt part cannot be ſuppoſed to be preſent at the entry, as not having knowledge thereof until after the entry is made.

Kent, to wit. BE *it remembred, that on the* 15*th day of* Sep. *in the firſt year of the reign of our ſovereign lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* Beckingham *in the county of* Kent *aforeſaid,* Eliz. Elwell *complained to us* E. B. P. B. *and* W. P. *three of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, that* Sir Edm. Elwell, *late of* London, *baronet,* I. B. *and* D. M. *into the meſſuage of her the ſaid* E. E. *being the manſion houſe of her the ſaid* E. E. *called* Langley houſe, *ſituate within the pariſh of* Beckingham *aforeſaid, did enter, and her the ſaid* E. E. *of the meſſuage aforeſaid, whereof the ſame* E. E. *at the time of the entry aforeſaid was ſeiſed as of the freehold of her the ſaid* E. E. *for the term of her life, unlawfully ejected, expelled, and amoved, and the ſaid meſſuage from her the ſaid* El. E. *unlawfully, with ſtrong hand and armed power, do yet hold and from her detain, againſt the form of the ſtatute in ſuch caſe made and provided; whereupon the ſame* El. E. *then, to wit, on the ſaid* 15*th day of* Sep. *at the pariſh of* B. *aforeſaid, prayeth of us, ſo as aforeſaid being juſtices, to her in this behalf that a due remedy be provided, according to the form of the ſtatute aforeſaid: Which complaint and prayer by us the aforeſaid juſtices being heard, we the aforeſaid* E. B. *baronet,* P. B. *and* W. P. *eſquires, juſtices aforeſaid, to the meſſuage aforeſaid perſonally have come, and do then and there find and ſee the aforeſaid* Edm. E. I. B. *and* D. M. *the aforeſaid meſſuage, with force and arms, unlawfully, with ſtrong hand and armed power, detaining, againſt the form of the ſtatute in ſuch caſe made and provided, according as ſhe the ſame* El. E. *ſo as is aforeſaid hath unto us complained: Therefore it is conſidered by us the aforeſaid juſtices, that the aforeſaid* Edmund Elwell, Joſeph Billers, *and* Daniel Monty, *of the detaining aforeſaid with ſtrong hand, by our own proper view then and there as is aforeſaid had, are convicted, and every of them is convicted, according to the form of the ſtatute aforeſaid; Whereupon we the juſtices aforeſaid, upon every of the aforeſaid* Ed. E. J. B. *and* D. M. *do ſet and impoſe ſeverally a fine of* 10l. *of good and lawful money of* Great Britain, *to be paid by them and every of them ſeverally to our ſaid ſovereign lord the king, for the ſaid offences; and do cauſe them, and every of them, then and there to be arreſted; and the ſame* Ed. E. J. B. *and* D. M. *being convicted, and every of them being convicted upon our own proper view, of the detaining aforeſaid, with ſtrong hand as is aforeſaid, by us the aforeſaid juſtices are committed, and every of them is committed, to the gaol of our ſaid lord the king, at* Maidſtone *in the county of* Kent *aforeſaid, being the next gaol to the meſſuage aforeſaid,*

ſaid, there to abide reſpectively, until they ſhall have paid their ſaid ſeveral fines reſpectively, to our ſaid lord the king, for their reſpective offences aforeſaid. Concerning which the premiſſes aforeſaid, we do make this our record. In witneſs whereof, we the aforeſaid E. B. *baronet,* P. B. *and* W. P. *eſquires, the juſtices aforeſaid, to this record our hands and ſeals do ſet, at the pariſh of* B. *aforeſaid, in the county of* Kent *aforeſaid, on the* 15*th day of* Sep. *in the firſt year aforeſaid of the reign of our ſaid ſovereign lord the now king.*

E. Bettenſon.
P. Burrel.
W. Paſſenger.

C. Mittimus for forcible detainer.

Weſtmorland. EDWARD Haſſel, *eſquire, one of the juſtices of our ſovereign lord the king's majeſty, aſſigned to keep the peace within the ſaid county of* W. *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the keeper of his majeſty's gaol at* ——— *in the ſaid county, and to his deputy and deputies there, and to every of them, greeting. Whereas upon complaint made unto me this preſent day, by* A. I. *of* ——— *in the ſaid county, yeoman, I went immediately to the dwelling houſe of the ſaid* A. I. *at* ——— *aforeſaid in the ſaid county, and there found* A. O. *late of* ——— *labourer,* B. O. *late of the ſame, weaver, and* C. O. *late of* ——— *butcher, forcibly, with ſtrong hand and armed power, holding the ſaid houſe, againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided: Therefore I ſend you, by the bringers hereof, the bodies of the ſaid* A. O. B. O. *and* C. O. *convicted of the ſaid forcible holding, by mine own view, teſtimony, and record; commanding you in his ſaid majeſty's name, to receive them into your ſaid gaol, and there ſafely to keep them, and every of them reſpectively, until they ſhall have reſpectively paid the ſeveral ſum of* 10 l. *of good and lawful money of* Great Britain, *to our ſaid ſovereign lord the king, which I have ſet and impoſed upon every of them ſeparately, for a fine and ranſom for their ſaid treſpaſſes reſpectively. Herein fail you not, at the peril that may follow thereof. Given at* ——— *aforeſaid, in the county aforeſaid, under my ſeal, the* ——— *day of* ——— *in the* ——— *year of the reign of our ſaid ſovereign lord king* George *the ſecond.*

Note; By the forms in all the books, all the offenders ſtand committed until all have paid, ſo as that the firſt ſhall not be diſcharged on payment of his own fine, but continue until all the reſt have paid likewiſe; which ſeems unreaſonable, and is not warranted by the ſtatute.

D. Precept to the ſheriff to return a jury.

Weſtmorland. HENRY Aglionby, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the ſheriff of the ſaid county, greeting: On behalf of our ſaid lord the king, I command you, that you cauſe to come before me at* ——— *in the county aforeſaid, on the* ——— *day of* ——— *next enſuing, twenty-four ſufficient and indifferent men, of the neighbourhood of* ——— *aforeſaid, in the county aforeſaid, every of whom ſhall have lands or tenements of* 40s. *yearly at the leaſt, above reprizes, to inquire upon their oaths for our ſaid lord the king, of a certain entry made with ſtrong hand (as it is ſaid) into the meſſuage of one* A. I. *at* ——— *aforeſaid, in the county aforeſaid, againſt the form of the ſtatute in ſuch caſe made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled,* 20s. *of iſſues at the aforeſaid day. And have you then there this precept. And this you ſhall in no wiſe omit, upon the peril that ſhall thereof enſue. Witneſs the ſaid* J. P. *at* ——— *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

The jurors oath.

YOU *ſhall true inquiry and preſentment make of all ſuch things as ſhall come before you, concerning a forcible entry* [or, *detainer*] *ſaid to have been lately committed in the dwelling-houſe of* ——— *yeoman, at* ——— *in this county; you ſhall ſpare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the beſt of your knowledge, and according to the evidence that ſhall be given to you: So help you god.*

The oath that A. F. *your foreman hath taken on his part, you and every of you ſhall truly obſerve and keep on your parts: So help you god.*

E. The inquiſition, indictment, or finding of the jury.

Weſtmorland. AN *inquiſition for our ſovereign lord the king, indented and taken at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oaths of* ——— *good and lawful men of the ſaid county, before* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, who ſay upon their oaths aforeſaid, that* A. I. *of* ——— *aforeſaid, yeoman, long ſince lawfully and peaceably was ſeiſed in his demeſne as of fee* [if it is not freehold, then ſay,

ſay, *poſſeſſed*] *of and in one meſſuage, with the appurtenances, in* ——— *aforeſaid, in the county aforeſaid, and his ſaid poſſeſſion* [*and ſeiſin*] *ſo continued until* A. O. *late of* ——— *yeoman,* B. O. *late of the ſame, yeoman, and* C. O. *late of the ſame, yeoman, and other malefactors unknown, the* ——— *day of* ——— *now laſt paſt, with ſtrong hand and armed power, into the meſſuage aforeſaid, with the appurtenances aforeſaid, did enter, and him the ſaid* A. I. *thereof diſſeiſed, and with ſtrong hand expelled; and him the ſaid* A. I. *ſo diſſeiſed and expelled from the ſaid meſſuage with the appurtenances aforeſaid, from the ſaid* ——— *day of* ——— *until the day of the taking of this inquiſition, with like ſtrong hand and armed power did keep out, and do yet keep out, to the great diſturbance of the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided.*

We whoſe names are hereunto ſet, being the jurors aboveſaid, do upon the evidences now produced before us, find the inquiſition aforeſaid true.

A. B.
C. D. *&c.*

F. Warrant to the ſheriff for reſtitution.

Weſtmorland. HENRY Fletcher, *eſquire, one of the juſtices of our ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the ſheriff of the ſaid county, greeting: Whereas by an inquiſition taken before me the juſtice aforeſaid, at* ——— *in the county aforeſaid, on this preſent* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *upon the oaths of* ——— *and by virtue of the ſtatutes made and provided in caſes of forcible entry and detainer, it is found, that* A. O. *late of* ——— *yeoman, and* B. O. *late of* ——— *yeoman, on the* ——— *day of* ——— *now laſt paſt, into a certain meſſuage, with the appurtenances, of* A. I. *of* ——— *aforeſaid, in the county aforeſaid, gentleman, ſituate, lying, and being at* ——— *aforeſaid, in the county aforeſaid, with force and arms did enter, and him the ſaid* A. I. *thereof then with ſtrong hand did diſſeiſe and drive out, and him the ſaid* A. I. *thus driven out from the aforeſaid meſſuage with the appurtenances, from the* ——— *day of* ——— *aforeſaid, to this preſent day of the taking of the ſaid inquiſition, with ſtrong hand and armed force did keep out, and do yet keep out, as by the inquiſition aforeſaid more fully appeareth of record: Therefore on the behalf of our ſaid ſovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the ſaid meſſuage and other the premiſſes, and the ſame with the appurtenances you cauſe to be reſeiſed, and that you cauſe the ſaid* A. I. *to be reſtored and put into his full poſſeſſion thereof, according as he, before the entry aforeſaid was ſeiſed, according to the form of the ſaid ſtatutes. And this you ſhall in no wiſe omit, on the penalty thereon incumbent. Given under my hand and ſeal at* ——— *in the ſaid*

ſaid county, the ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Foreign ſervice.

Artificers.

1. BY the 5 *G. c.* 27. If any perſon ſhall contract with, entice, or endeavour to perſuade any manufacturer or artificer in wool, iron, ſteel, braſs, or any other metal, clockmaker, watchmaker, or any other artificer or manufacturer, to go out of this kingdom, into any foreign country out of his majeſty's dominions, and ſhall (on proſecution in 12 months) be convicted thereof on indictment or information, in the courts at *Weſtminſter*, aſſizes, or ſeſſions of the county where the offence ſhall be committed; he ſhall for the firſt offence be fined not exceeding 100 *l.* and be impriſoned for three months, and until the fine be paid; for the ſecond offence, ſhall be fined at the diſcretion of the court, and be impriſoned 12 months, and till the fine is paid. *ſ.* 1, 2.

And if any ſubject, being ſuch artificer or manufacturer, ſhall go into any country out of his majeſty's dominions, to exerciſe or teach any the ſaid manufactories to foreigners, or if any ſubject who ſhall be in any ſuch foreign country, and there exerciſing any the ſaid manufactories, ſhall not return in ſix months next after warning be given him, by the ambaſſador, miniſter, or conſul, or perſon authorized by him, or by a ſecretary of ſtate, and from thenceforth continually inhabit within this realm; he ſhall be incapable of any legacy, or of being executor, or adminiſtrator, and of taking any lands, by deſcent, deviſe, or purchaſe, and forfeit his lands and goods, and be deemed an alien, and out of the king's protection. *ſ.* 3.

And on complaint on oath before a juſtice, that any perſon is endeavouring to ſeduce or draw away any ſuch manufacturer or artificer, or that he hath contracted or is preparing to go out of the kingdom; he may iſſue his warrant to bring ſuch perſon before him or ſome other juſtice; and if it ſhall appear to ſuch juſtice, by confeſſion, or the oath of one witneſs, that ſuch perſon was guilty of any the ſaid offences, he may bind him over to the next aſſizes or ſeſſions, to anſwer the premiſſes; and if he ſhall upon indictment be there convicted of any ſuch promiſe or contract, or preparation to go abroad beyond the ſeas, he ſhall give ſuch ſecurity not to depart out of the realm, as ſuch court ſhall think reaſonable, and be impriſoned until ſuch ſecurity be given. *ſ.* 4.

And by the 23 *G.* 2. *c.* 13. If any perſon ſhall contract with, or endeavour to perſuade or ſeduce any artificer in the manufactures of *Great Britain*, to go into any foreign country, not belonging to the crown of *Great Britain*; and ſhall be thereof convicted, in twelve months, in the king's bench, or at the aſſizes; he ſhall for every ſuch perſon forfeit 500 *l.* and be impriſoned

priſoned in the common gaol for twelve months, and till payment of the forfeiture; and for a ſecond or other ſubſequent offence, ſhall forfeit 1000*l.* and be impriſoned two years, and till payment. *ſ.* 1, 2.

And if any perſon ſhall put on board any veſſel not bound directly to ſome of the *Britiſh* dominions, any tools or utenſils, or part thereof, proper for either the woollen or ſilk manufactures; he ſhall forfeit the ſame, and 200*l.* *id. ſ.* 3.

And any officer of the cuſtoms may ſeize, and ſecure in ſome of the king's warehouſes, all ſuch tools and utenſils as ſhall be found on board any ſuch veſſel; and the ſame, after condemnation, ſhall be publickly ſold. *id. ſ.* 4.

And if the maſter or captain ſhall knowingly permit any the ſaid tools or utenſils to be put on board his ſhip; he ſhall forfeit 100*l.* and if it is a king's ſhip, he ſhall alſo forfeit his office, and be incapable of any office under the crown. *id. ſ.* 5

And if any officer of the cuſtoms ſhall take any entry outward, or ſign any ſufferance for ſhipping or exporting any the ſaid tools, or knowingly permit the ſame to be done; he ſhall forfeit 100*l.* and his office, and be incapable of any office under the crown. *id. ſ.* 6.

All which ſaid penalties, on this act, ſhall be half to the king, and half to him that ſhall proſecute. *id. ſ.* 7.

2. By the 9 *G.* 2. *c.* 30. If any ſubject ſhall inliſt, or enter himſelf; or if any perſon ſhall procure any ſubject to inliſt or enter himſelf, or hire or retain any ſubject, with intent to cauſe him to inliſt or enter himſelf; or procure any ſubject to go beyond the ſeas or imbark with intent and in order to be inliſted to ſerve any foreign prince, ſtate, or potentate, as a ſoldier, without the king's leave under his ſign manual; he ſhall be guilty of felony without benefit of clergy. *ſ.* 1. Soldiers.

And offences committed out of the realm may be tried in any county in *England*. *ſ.* 2.

But if any perſon ſo inliſted, or inticed to go beyond the ſeas in order to be inliſted, as a non-commiſſion officer or private ſoldier, in any foreign ſervice, ſhall in fourteen days voluntarily diſcover upon oath, before any juſtice or other civil magiſtrate, the perſon by whom he was inliſted or inticed, ſo as he be convicted; he ſhall be indemnified. *ſ.* 3.

Foreſtalling, ingroſſing, and regrating.

F*Oreſtalling (foreſtællan,* or *foreſtallan)* in the Engliſh-Saxon Derivation. ſignifieth properly to *market before the publick*, or to *prevent the publick market*; and metaphorically, to *intercept* in general: and ſeemeth derived from *fore*, which is the ſame as *before*, and *ſtalle* a ſtanding place or department; from whence ſprang the ancient

cient word *ſtallage*, which ſignifieth money paid for erecting a ſtall or ſtand, for the ſelling of goods in a fair or market:

Ingroſſing is from *in*, and *groſs*, great or whole:

And *regrating*, from *re*, again, and the French *grater*, to *grate* or ſcrape; and ſignifieth the ſcraping or dreſſing of cloth or other goods, in order for ſelling the ſame again.

I ſhall treat, firſt, concerning theſe offences at the common law; and, ſecondly, concerning the ſame by ſtatute.

I. Concerning theſe offences at common law.

Theſe offences at common law.

1. At the common law, all endeavours whatſoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by ſpreading falſe rumours, or by buying things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame market, or by any other ſuch like devices, are highly criminal, and puniſhable by fine and impriſonment. 1 *Haw.* 234, 5.

2. By the common law, a merchant bringing victuals into the realm, may ſell the ſame in groſs; but no perſon can lawfully buy within the realm any merchandize in groſs, and ſell the ſame in groſs again, without being liable to be indicted for the ſame. 3 *Inſt.* 196.

3. And the bare ingroſſing of a whole commodity, with an intent to ſell it at an unreaſonable price, is an offence indictable at common law, whether any part thereof be ſold by the ingroſſer or not. 1 *Haw.* 235.

4. And ſo jealous is the common law of all practices of this kind, that it will not ſuffer corn to be ſold in the sheaf; perhaps for this reaſon, becauſe by ſuch means the market is in effect foreſtalled. 1 *Haw.* 235.

5. Anciently the ingroſſer and regrater were comprehended under the word foreſtaller; but now they are diſtinguiſhed by the following ſtatute.

By ſtatute:

II. Concerning theſe offences by ſtatute.

Foreſtalling, what.

1. *Whoſoever ſhall buy, or cauſe to be bought, any merchandize, victual, or any other thing whatſoever, coming by land or by water toward any market or fair, to be ſold in the ſame, or coming toward any city, port, haven, creek, or road, from any parts beyond the ſea to be ſold; or make any bargain, contract or promiſe, for the having or buying the ſame, or any part thereof, ſo coming as is aforeſaid, before the ſaid merchandize, victuals, or other things ſhall be in the market, fair, city, port, haven, creek, or road, ready to be ſold; or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon for the inhancing of the price, or dearer ſelling of any thing abovementioned; or elſe diſſuade, move, or ſtir any perſon coming to the market or fair, to abſtain or forbear to bring or convey any of the things above rehearſed, to any market, fair, city, port,*

port, haven, creek, or road to be ſold, as aforeſaid,——ſhall be deemed a foreſtaller. (A) 5 & 6 Ed. 6. c. 14. ſ. 1.

Ingroſſing, what.

2. *Whoſoever ſhall ingroſs, or get into his hands by buying, contracting, or promiſe taking, other than by demiſe or grant, or leaſe of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victuals whatſoever, to the intent to ſell the ſame again, ſhall be deemed an unlawful ingroſſer.* (B) 5 & 6 Ed. 6. c. 14. ſ. 3.

And it is ſaid not to be ſufficient in an indictment or information, to ſay that the defendant bought ſo much goods, but the words of the ſtatute are to be purſued, which are——*ſhall ingroſs or get into his hands by buying.* But it is not neceſſary to ſet forth, that the defendant did not come by it, by a demiſe of land, or the like; but the defendant, if he have any ſuch matter to alledge, muſt give it in evidence. 1 *Haw.* 237, 238.

Regrating, what.

3. *Whoſoever ſhall by any means regrate, obtain, or get into his hands or poſſeſſion, in a fair or market, any corn, wine, fiſh, butter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine, pigs, geeſe, capons, hens, chickens, pigeons, conies, or other dead victual whatſoever, that ſhall be brought to any fair or market to be ſold, and do ſell the ſame again in any fair or market holden or kept in the ſame place, or in any other fair or market within four miles thereof, ſhall be deemed a regrater.* (C) 5 & 6 Ed. 6. c. 14. ſ. 2.

Penalty.

4. And if any ſhall be guilty of any the ſaid offences, he ſhall for the firſt offence be impriſoned two months, and forfeit the value of the goods; for the ſecond offence, be impriſoned half a year, and forfeit double value; and for the third offence, ſhall be ſet on the pillory, forfeit all his goods, and be impriſoned during the king's pleaſure. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 4, 5, 6.

Half the ſaid forfeitures to go to the king, and half to him that will ſue, in two years after the offence. *id. ſ.* 9, 14.

And the ſeſſions may hear and determine the ſame, by inquiſition, preſentment, bill, or information, and by examination of two witneſſes, and may make proceſs thereupon, as tho' they were indicted; and eſtreat the king's moiety, and award execution of the other moiety for the party, by *fieri facias*, or *capias*, as the courts at *Weſtminſter* may do. *id. ſ.* 10.

Form of the indictment or information.

5. From hence it ſeems clearly to follow, as well as from the general rules of law, that no information for any of the ſaid offences againſt the ſaid ſtatute can be good, without ſhewing in certain the quantity of the thing for which the penalty is ſuppoſed to be incurred, not only becauſe otherwiſe the judgment to be given on ſuch an information can never be pleaded in bar of any other, becauſe it cannot appear that both of them were brought for the ſame thing; but alſo, becauſe it cannot appear to the court what forfeiture the defendant ought to incur, unleſs the extent of the offence be ſpecially ſet forth. 1 *Haw.* 238.

Exceptions and limitations.

6. But nothing in the act abovementioned ſhall extend to the buying of any ſuch thing (otherwiſe than by foreſtalling) by any fiſhmonger, butcher, or poulterer, as concerns their trade, who ſhall

ſhall ſell the ſame again upon reaſonanable prices by retail; nor to the buying of wine, or other dead victual, by any innholder or victualler, to retail the ſame in his houſe; nor to the buying of any dried or ſalted fiſh (not foreſtalled), and ſold for reaſonable prices; nor to the buying of any corn, fiſh, butter, or cheeſe, by perſons duly licenſed, and not foreſtalling. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 7.

Neither ſhall it extend to wines, oils, ſugars, ſpices, currans, nor other foreign victuals; fiſh and ſalt only excepted. 13 *El. c.* 25. *ſ.* 21.

And by the 15 *C.* 2. *c.* 7. When the quarter of wheat (*Winchester* meaſure) doth not exceed 48 *s.* rye 32 *s.* barley or malt 28 *s.* buck wheat 28 *s.* oats 13 *s.* 4 *d.* peaſe or beans 32 *s.* any perſon (not foreſtalling, nor ſelling the ſame again in the ſame market in three months) may buy ſuch corn, at or under ſuch price, and lay it up, and ſell the ſame again, without incurring any penalty. *ſ.* 4.

Alſo, it hath been reſolved, that ſuch *victual* only, as is neceſſary for the food of man, is within the aforeſaid ſtatute of 5 & 6 *Ed.* 6. and therefore that apples and cherries, and ſuch like fruit are not: but that ſalt is a victual within the meaning of it. 1 *Haw.* 237.

Information may be laid in any county.

7. By 31 *El. c.* 5. which ordains that informations for offences againſt penal ſtatutes, muſt be laid in the proper county, it is provided, that nevertheleſs an information on the ſaid ſtatute of *Ed.* 6. againſt foreſtalling, ingroſſing, or regrating, where the penalty ſhall appear to be 20 *l.* or above, may be laid out of the proper county, and in any other county at the pleaſure of the informer.

A. Indictment for foreſtalling.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, did buy and cauſe to be bought of and from one* A. S. *twenty oxen, for the ſum of* 200 *l. of lawful money of* Great Britain, *as he the ſaid* A. S. *then and there was driving the ſaid twenty oxen towards the market of* M. *to ſell the ſaid twenty oxen in the ſaid market, and before the ſaid twenty oxen were brought into the ſaid market, where the ſame ſhould be ſold; in contempt of our ſaid lord the king and his laws; to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, his crown and dignity, and againſt the form of the ſtatute in that caſe made and provided.*

B. Indictment

B. Indictment for ingroſſing.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforeſaid, in the county aforeſaid, did ingroſs and get into his hands, by buying of and from one* A. S. 50 *quarters of wheat, to the intent to ſell the ſame again; to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, his crown and dignity, and againſt the form of the ſtatute in that caſe made and provided.*

C. Indictment for regrating.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands and poſſeſſion ten geeſe and twenty chickens, of and from one* A. S. *for the ſum of* 30s. *of lawful money of* Great Britain *(the ſaid geeſe and chickens then being brought to the ſaid market by the ſaid* A. S. *to be ſold); and that afterwards, to wit, on the ſame* ——— *day of* ——— *in the year aforeſaid, he the ſaid* A. O. *at the pariſh aforeſaid, in the county aforeſaid, in the ſaid market there, unlawfully did regrate the ſaid geeſe and chickens, and ſell the ſame again to one* A. B. *for the ſum of* 40s. *of like lawful money of* Great Britain, *in contempt of our ſaid lord the king and his laws, to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in that caſe made and provided.*

Foreſts. See Game.

Forfeiture.

Forfeiture.

The forfeitures for particular offences may be found under their reſpective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.
II. Of loſs of dower.
III. Of corruption of blood.

I. Of forfeiture of lands and goods.

Forfeiture of lands.

1. IT ſeems agreed, that by the common law, all lands of inheritance, whereof the offender was ſeiſed in his own right, and alſo all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treaſon, and to the lord of whom they are immediately holden, by an attainder of petit treaſon or felony. 2 *Haw.* 448.

But it ſeems clear, that the lord cannot enter into the lands holden of him, upon an eſcheat for petit treaſon or felony, without a ſpecial grant, till it appear by due proceſs, that the king hath had his prerogative of the year, day, and waſte. 2 *Haw.* 448.

Concerning which year, day, and waſte, it is enacted by the 17 *Ed.* 2. *c.* 16. that the king ſhall have the goods of all felons attainted, and fugitives, whereſoever they be found. And if they have freehold, it ſhall be forthwith taken into the king's hands, and the king ſhall have all profits of the ſame by one year and one day; and the land ſhall be waſted and deſtroyed in the houſes, woods, and gardens, and in all manner of things, belonging to the ſame land. And after the king hath had the year, day, and waſte, the land ſhall be reſtored to the chief lord of the fee, unleſs that he fine before with the king, for the year, day, and waſte.

Forfeiture of goods.

2. As to forfeiture of goods, it ſeems agreed, that all things whatſoever, which are comprehended under the notion of a perſonal eſtate, whether they be in action or poſſeſſion, which the party hath, or is intitled to, in his own right, and not as executor or adminiſtrator to another, are liable to ſuch forfeiture, in the following caſes:

(1) Upon a conviction of treaſon or felony. 2 *Haw.* 450.

(2) Upon a flight found before the coroner, upon view of a dead body. *id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *id.*

(4) Alſo a perſon indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in caſe of grand larceny. 1 *H. H.* 530. 2 *Haw.* 451.

But

But it is certain that the party may in all caſes, except that of the coroner's inqueſt, traverſe the finding of the flight. Alſo it ſeems agreed, that the particulars of the goods found to be forfeited may be alſo traverſed. 2 *Haw.* 451.

(5) Upon a preſentment by the oaths of 12 men, that a perſon arreſted for treaſon or felony, fled from, or reſiſted thoſe who had him in cuſtody, and was killed by them in the purſuit or ſcuffle. 2 *Haw.* 451.

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods ſo waived, whether they be his own, or the goods of others ſtolen by him, which ſhall not be reſtored to the right owners but upon a proper proſecution. 2 *Haw.* 451.

(7) Alſo, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchaſing other goods. 2 *H. H.* 388, 389.

But on burning in the hand, he ought to be immediately reſtored to poſſeſſion of his lands. 2 *H. H.* 389.

3. Upon outlawry in treaſon or felony, the offender ſhall loſe and forfeit as much as if he had appeared, and judgment had been given againſt him, as long as the outlawry is in force. *Wood* 1112. Forfeiture upon outlawry.

And thoſe that tarry till the exigent, in treaſon, felony, or petit larceny, forfeit their goods, tho' they render themſelves to juſtice, and are acquitted; for it was a flight in law. *Wood* 1112.

4. But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unleſs he fled; for that is a diſtinct forfeiture, altho' the party be not guilty of the fact. 1 *H. H.* 493. Forfeiture in ſe defendendo.

5. It ſeems agreed, that the forfeiture, upon an attainder either of treaſon or felony, ſhall have relation to the time of the offence, for the avoiding of all ſubſequent alienations of the *lands*; but to the time of the conviction or flight found only, as to *chattels*; unleſs the party were killed in flying or reſiſting, in which caſe it is ſaid, that the forfeiture of the chattels ſhall relate to the time of the offence. 2 *Haw.* 454. To what time the forfeiture ſhall relate.

6. But tho' the goods of an offender be not forfeited, till the conviction, or flight found by inqueſt, yet whether they may be ſeized upon the offence committed, hath been controverted; concerning which Lord *Hale* ſaith thus: What is to be done with the felon's goods before forfeiture.

It ſeemeth clear, that at the common law, if a man had committed felony or treaſon, or tho' poſſibly he had committed none, yet if he had been indicted, the ſheriff, coroner, or other officer, could not ſeize and carry away the goods of the offender or party accuſed:

Again, he could not in that caſe have removed the goods out of the cuſtody of the offender or party accuſed, and deliver them over to the conſtables or to the *villata*, to anſwer for them:

But if the party were indicted, the ſheriff or other officer might make a ſimple ſeizure of them only to inventory and appraiſe them, and leave them to the cuſtody of the ſervants or bailiff of the party indicted, in caſe he would give ſecurity againſt their

being imbeziled, or in default thereof he might deliver them to the conſtable or vill to be anſwerable for them, but yet ſo that the party accuſed and his family have ſufficient out of them for their livelihood and maintenance:

And poſſibly the ſame law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of ſeizure might have been made, whether he committed the felony or not:

But in caſe there were no indictment, then it is at the peril of him that ſeizeth, if he committed not the felony:

And then as to the ſtatute of 1 *R.* 3. *c.* 3. it is as follows; *No ſheriff or other perſon ſhall take or ſeize the goods of any perſon arreſted or impriſoned for ſuſpicion of felony, before he be convicted or attainted, or before the goods be otherwiſe forfeited; on pain of double value to the party grieved:*

Mr. *Stamford* thinks this is but in affirmance of the common law, only that it gives a penalty; but it ſeems to be ſomewhat more than ſo, for this prohibits the ſeizure of the goods of a party impriſoned, tho' he were alſo indicted, but not yet convicted, where unqueſtionably the common law allowed ſuch a ſeizure, if the party or his friends did not ſecure the forthcoming of the goods, where the party was indicted:

But upon this ſtatute theſe things are conſiderable; 1. As to perſons at large, it ſeems to me (ſays he) that if they flie not, there can no ſeizure at all made, whether they are indicted or not; for the ſtatute did not intend a greater privilege to a party impriſoned, than to him that is at large. 2. That if he be at large, and *fly* for it, yet his goods cannot be ſeized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraiſed, and inventoried, in the houſe or place where they lie:

And yet I know not how it comes to paſs, ſays he, the uſe of ſeizing the goods of perſons accuſed of felony, tho' impriſoned or not impriſoned, hath ſo far obtained notwithſtanding this ſtatute, that it paſſeth for law and common practice, as well by conſtables, ſheriffs, and other the king's officers, as by lords of franchiſes, that there is nothing more uſual:

Upon the whole, he ſays, that the opinion of my Lord *Coke*, in his 3 *Inſt.* 228. hath truly ſtated the law, at leaſt as it ſtands upon the ſtatute of 1 *R.* 3. *viz.* 1. That *before* the indictment, the goods of any perſon cannot be ſearched, inventoried, or in any ſort ſeized. 2. That *after* the indictment, they cannot be ſeized and removed, or taken away, before conviction or attainder:

But then it may be ſaid, to what purpoſe may they be ſearched and inventoried after indictment, if they may not be removed, but are equally liable to imbeziling as before:

I think (he ſays) he is not bound to find ſureties, neither hath the officer at this day any power to remove them in default of ſureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unleſs in caſe of a ſecond

capias on the 25 *Ed.* 3. *c.* 14.) for the priſoner or party indicted may ſell them *bona fide*; and if he may do ſo, the vendee may take them, and the *villata* cannot refuſe the delivering of them to the vendee, tho' the goods had been delivered to them:

But there is this advantage by the viewing and appraiſing, that thereby the king is aſcertained what the goods are, and may purſue them that take or imbezil them, by information (if the party happen to be convict) and try the property with them, whether they are really ſold, or ſold only fraudulently without valuable conſideration to prevent the forfeiture. 1 *H. H.* 363, 4, 5, 6, 7.

II. Of loſs of dower.

Forfeiture of dower in felony.

1. Albeit a perſon ſhall be attainted of felony, yet his wife ſhall not forfeit her dower. 1 *Ed.* 6. *c.* 12. *f.* 17.

In treaſon.

2. But on his attainder of any treaſon, ſhe ſhall forfeit her dower. 5 & 6 *Ed.* 6. *c.* 11. *f.* 13. But in ſome kinds of treaſon (particularly with regard to the coin) there is a ſpecial ſaving of the wife's dower by ſtatute.

III. Of corruption of blood.

Corruption of blood.

1. It is agreed, that by an attainder of treaſon or felony, the blood is ſo far ſtained or corrupted, that the party loſes all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* 456.

2. Alſo, that he can neither inherit as heir to an anceſtor, nor have an heir. 2 *Haw.* 456.

3. But the king's pardon, tho' it doth not reſtore the blood, yet as to iſſues born after, hath the effect of a reſtitution. 1 *H. H.* 358.

4. But reſtitution of blood in its true nature and extent, can only be by act of parliament. 1 *H. H.* 358. 2 *Haw.* 458.

Forgery.

1. FORGERY is an offence at common law, and an offence alſo by ſtatute.

2. Forgery at the common law, is an offence in falſly and fraudulently making or altering any matter of record, or any other authentick matter of a publick nature; as a pariſh regiſter, or any deed, will, privy ſeal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw.* 182, 184.

As for writings of an inferior nature, as private letters, and ſuch like, the counterfeiting of them is not properly forgery; therefore in ſome caſes it may be more ſafe to proſecute ſuch offenders for a miſdemeanor, as cheats. For by reaſon of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon ſome of the following ſta-

tutes, and very few at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and impriſoned. *Wood* 710. 1 *Haw.* 184.

But as to the power of juſtices of the peace in this matter, Mr. *Hawkins* ſays, it hath been ſettled of late, that they have no juriſdiction over forgery at the common law; the principal reaſon of which reſolution (he ſays) as he apprehended, was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was for the preſervation of the peace againſt perſonal wrongs and open violence, and the word *treſpaſs* in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the commiſſion, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40. 1 *Salk.* 406.

But Mr. *Barlow* ſays nevertheleſs, that it ſeemeth clear, that a juſtice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to priſon in order to abide his trial. *Barl.* 244.

3. The ſtatutes that make forgery an offence are theſe that follow:

The firſt is that famous ſtatute of the 5 *El. c.* 14. which by an example worthy to be imitated, doth (in order to prevent confuſion) repeal all former ſtatutes againſt forgery. By this it is enacted, that *if any perſon upon his own head and imagination, or by falſe conſpiracy and fraud with others, ſhall wittingly, ſubtilly, and falſly forge or make, or ſubtilly cauſe, or willingly aſſent to be forged or made, any falſe deed, charter, or writing ſealed, court roll, or the will of any perſon in writing, to the intent that the ſtate of freehold or inheritance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame may be moleſted, troubled, defeated, recovered, or charged; or ſhall pronounce, publiſh, or ſhew forth in evidence the ſame as true, knowing the ſame to be falſe or forged, to the intent as above (except lawyers or attornies for their clients, not being privy to the forgery); and ſhall be thereof convicted, either upon action at the ſuit of the party, or otherwiſe according to the order and due courſe of the laws of this realm,——he ſhall pay to the party double coſts and damages, and be ſet in the pillory, and have both his ears cut off, and his noſtrils ſlit and ſeared with a hot iron, and ſhall forfeit the profits of his lands during life, and be impriſoned alſo during life.* ſ. 2.

And all juſtices of oyer and terminer, and juſtices of aſſize, ſhall have power to inquire of, hear, and determine all offences in this act. ſ. 10.

Upon his own head] When the proceedings were in latin, *ſuper proprium ſuum caput* was allowed to be good upon an indictment on this ſtatute; the law having more regard that the ſtatute be ſtrictly purſued, than rendred into proper latin. 1 *Haw.* 187.

Forge

Forge or make] Making a ſecond deed, and antedating it, with intent to make it take place of a former deed, is forgery within this ſtatute. 3 *Inſt.* 167.

Or ſubtilly cauſe, or willingly aſſent] To *cauſe*, is to procure or counſel one to forge; to *aſſent*, is to give his aſſert or agreement afterwards, to the procurement or counſel of another; to *conſent*, is to agree at the time of the procurement or counſel, and ſuch is in law a procurer. 3 *Inſt.* 169.

But Lord *Hale* ſays, that an *aſſent* after the fact committed, makes not the party aſſenting guilty or principal in the forging; but it muſt be a precedent, or concomitant aſſent. 1 *H. H.* 684.

Falſe deed, charter, or writing] It ſeems to be no way material, whether a forged inſtrument be made in ſuch a manner, that if it were in truth ſuch as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 *Hawk.* 184.

Writing ſealed] Theſe are large words; and the making of a falſe cuſtomary of a manor in writing under ſeal, containing divers falſe cuſtoms, to the diſheriſon of the lord of the manor, and that the ſame had been allowed and permitted by the lord of the manor, which was alſo falſe, was reſolved to be within theſe words *a falſe writing ſealed*. 3 *Inſt.* 171.

Sealed] It is required that the deed, charter, or writing muſt be ſealed, that is, have ſome impreſſion upon the wax; for wax, without an impreſſion is not a ſeal. 3 *Inſt.* 169.

Court roll, or will] Here are two writings which need not be ſealed, becauſe they may take effect without any ſeal, for that they be no deeds; and no writing can have the force of a deed, without a ſeal. 3 *Inſt.* 170.

Will] If any perſon which writeth the will of a ſick man, inſerteth a clauſe therein concerning the deviſe of lands, without any direction of the deviſor, this is forgery, altho' he did not forge the whole will. 3 *Inſt.* 170.

To the intent that the ſtate of freehold or inheritance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame may be moleſted, troubled, defeated, recovered, or charged] *E.* 4 *G.* 2. *K.* and *Japhet Crooke*. The defendant was convicted on this ſtatute for forging a leaſe and releaſe. And the indictment ſets forth, that *Garbut* and his wife were ſeiſed in fee of certain meſſuages, lands, and tenements called *Jawick* in the pariſh of *Clackton* in *Eſſex*, and that the defendant intending to moleſt them and their intereſt in the premiſſes, forged a leaſe and releaſe as from *Garbut* and his wife, whereby they are ſuppoſed for a valuable conſideration to convey to him "all that park called *Jawick* park in the pariſh of "*Clackton* in *Eſſex*, containing eight miles in circumference, with "all the deer, woods, &c, thereto belonging." It was moved in arreſt of judgment, that the premiſſes ſuppoſed to be conveyed,

were ſo materially different from thoſe which were really the eſtate of *Garbut* and his wife, which was houſes, lands, and tenements; that it was impoſſible this conveyance ever could moleſt or diſturb them: if it was a true deed, it could not paſs their lands at law, for want of a proper deſcription; and though where lands are improperly deſcribed, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a ſale, and they do it as carrying that contract into execution. The court for ſeveral terms inclined ſtrongly with the objection; but this term *Raymond* Ch. J. declared that they were all of opinion to over-rule it: for by the words of the act, it is not neceſſary that there ſhould be a charge or a poſſibility of a charge; it is ſufficient that it be done with that intent, and the jury have found that it was done with intent to moleſt *Garbut* and his wife in the poſſeſſion of their lands. Accordingly judgment was given for the king, and the defendant had ſentence to undergo the puniſhment appointed by the act for forging a deed, and the ſame was executed upon him at *Charing-croſs*. *Str.* 901.

Pronounce or publiſh] That is, when one by words or writing pronounceth or publiſheth the deed to any other as true. 3 *Inſt.* 171.

Knowing the ſame to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publiſh it afterwards as true, and it prove to be forged indeed, he is in danger of this ſtatute. 3 *Inſt.* 171. 1 *Haw.* 187.

But Lord *Hale* ſays, that tho' ſuch a relation may be an evidence of fact to prove his knowledge, yet it is not concluſive; for perchance there might be circumſtances of fact, that might make the perſon relating it, or his relation, not credible: So that the *knowing* muſt be upon the whole matter left to the jury, upon the circumſtances of the caſe. 1 *H. H.* 685.

Juſtices of oyer and terminer] Albeit juſtices of the peace, by their commiſſion, have power to hear and determine felonies and treſpaſſes, yet they are not included under the name of juſtices of oyer and terminer; for juſtices of oyer and terminer are known by one diſtinct name, and juſtices of the peace by another. 3 *Inſt.* 103.

And by the ſame ſtatute it is further enacted, that *if any perſon, upon his own head or imagination, or by falſe conſpiration or fraud with any other, ſhall wittingly, ſubtilly, and falſly forge or make, or cauſe or aſſent to be made and forged any falſe charter, deed, or writing, to the intent that any perſon may have or claim any eſtate or intereſt for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee ſimple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, releaſe, or other diſcharge of any debt, account, action, ſuit, demand, or other thing perſonal; or ſhall pronounce, publiſh, or give the ſame in evidence as true, knowing the ſame to be falſe and forged, he ſhall, on conviction in like manner, pay to the party double coſts and damages, and be ſet*

on

on the pillory, and have one of his ears cut off, and be impriſoned for a year. ſ. 3.

Obligation or bill obligatory] The forgery of a deed of gift of mere perſonal chattels, is not within this ſtatute. 1 *Haw.* 186.

And *if after verdict, the plaintiff ſhall releaſe the judgment or execution, or ſuffer a diſcontinuance, it ſhall only diſcharge his own coſts and damages, and not the other puniſhments.* ſ. 6.

And by the ſame ſtatute it is further enacted, that *if any perſon ſhall after conviction offend again in any of the ways abovementioned, he ſhall be guilty of felony without benefit of clergy.* ſ. 7, 8.

4. Thus ſtood the matter upon the ſtatute of 5 *El.* Afterwards by many ſubſequent ſtatutes (ſeveral of which were occaſional only, and adapted to the particular juncture and circumſtances of the time in which they were made, but which are referred to and enforced by the ſubſequent ſtatutes on the ſame ſubject) divers other forgeries were made felony without benefit of clergy for the firſt offence; and others had other puniſhments aſſigned them: Which are as follows:

It ſhall be felony without benefit of clergy, to forge or counterfeit

(1) Any bank bills, or notes, or the ſeal of the governor and company of the bank of *England.* 7 & 8 *W.* *c.* 31. *ſ.* 36. 8 & 9 *W.* *c.* 20. *ſ.* 36. 11 *G.* *c.* 9. *ſ.* 6. 12 *G.* *c.* 32. *ſ.* 9.

And in general, any bank note, bill of exchange, dividend warrant, or any bond or obligation under the ſeal of the bank, or indorſement thereon; or knowingly offering to diſpoſe thereof. 15 *G.* 2. *c.* 13. *ſ.* 12.

(2) India bonds. 12 *G.* *c.* 32. *ſ.* 9.

(3) Bonds, receipts, warrants, or ſeal of the ſouth-ſea company. 9 *An.* *c.* 21. *ſ.* 57. 6 *G.* *c.* 4. *ſ.* 56. 6 *G.* *c.* 11. *ſ.* 50. 12 *G.* *c.* 32. *ſ.* 9.

(4) Exchequer bills: by the ſeveral acts which direct the iſſuing the ſame.

(5) Any power to transfer ſtocks. 8 *G.* *c.* 22. *ſ.* 1. 9 *G.* *c.* 12. *ſ.* 4.

(6) Lottery tickets and orders: by the ſeveral lottery acts.

(7) Policy of aſſurance. 6 *G.* *c.* 18. *ſ.* 13.

(8) Mediterranean paſſes. 4 *G.* 2. *c.* 18.

(9) Army debentures. 5 *G.* *c.* 14. *ſ.* 10. 9 *G.* *c.* 5. *ſ.* 19.

(10) Marriage licence or regiſtry of a marriage. 26 *G.* 2. *c.* 33.

(11) Stamps on vellum, parchment, and paper, by the ſeveral ſtamp acts.

(12) Stamps on linen imported. 10 *An.* *c.* 19. *ſ.* 97. And ſelling it knowingly with a counterfeit ſtamp; 100*l.* and the pillory. *id.*

And by the 9 & 10 *W.* *c.* 41. Forgers of ſeamens wills, or letters of attorney, ſhall over and above the penalties by former laws, forfeit 200*l.* with coſts; half to the king, and half to him that will ſue. *ſ.* 3.

5. And beſides theſe particular laws, in the 2 G. 2. a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that *if any perſon ſhall falſly make, forge, or counterfeit, or cauſe or procure the ſame to be done, or willingly aid or aſſiſt in the falſe making, forging, or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promiſſory note, indorſement or aſſignment of any bill of exchange or promiſſory note, acquittance or receipt for money or goods, with intent to defraud any perſon; or ſhall utter or publiſh the ſame as true, knowing the ſame to be forged;—he ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, or diſheriſon of heirs.* 2 G. 2. c. 25. ſ. 1, 5.

6. And by the 7 G. 2. *c.* 22. it is further enacted, by way of addition to the foregoing, that *if any perſon ſhall falſly make, alter, forge, or counterfeit, or willingly act or aſſiſt in the falſe making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal ſum of any accountable receipt for any note, bill, or other ſecurity for payment of money, or any warrant or order for payment of money, or delivery of goods, with intent to defraud any perſon; or ſhall utter or publiſh the ſame as true, with intent to defraud any perſon, knowing the ſame to be falſe;—he ſhall be guilty of felony without benefit of clergy:* and this, without any ſaving of the corruption of blood, or diſheriſon of heirs.

7. Forgery is excepted out of the act of general pardon, 20 G. 2.

Fornication. See Lewdneſs.

Fraud. See Cheat.

Fruit and Fruit trees. See Wood.

Fuel.

BY the 43 *El. c.* 14. All faggots to be ſold ſhall contain in compaſs, beſides the knot of the bond, 24 inches of aſſize; and every faggot ſtick within the bond, ſhall contain full three foot of aſſize, except only one ſtick to be one foot long, to ſtop or harden the binding.

By the 9 *An. c.* 15. All billets (except thoſe made of beech, 10 *An. c.* 6.) that lie expoſed in publick places where they are uſually bought or ſold, ſhall be aſſized, and cut or marked in manner following; That is to ſay,

All billets of what ſcantling or denomination ſoever, ſhall contain in length three foot and four inches, and be of the following dimenſions; *viz.*

Names of the billets.	Round		Half round		Quarter cleft		
	in.	qr.	in.	qr.	in.	qr.	
A ſingle	7	2	0	0	0	0	No notch.
A caſt	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle,
2 caſt	15	0	17	1	17	0	Two notches.
3 caſt	18	1	21	1	21	0	One at each end, and one in the middle.
4 caſt	21	1	24	2	24	0	4 notches.
5 caſt	23	3	27	2	27	0	5 notches.
6 caſt	26	0	30	0	29	2	6 notches.
7 caſt	28	0	32	2	32	0	7 notches.
8 caſt	30	0	34	3	34	0	8 notches.
9 caſt	31	3	36	3	36	1	9 notches.
10 caſt	33	2	38	3	38	0	10 notches.
11 caſt	35	1	——		——		11 notches.
12 caſt	36	3	——		——		12 notches.
13 caſt	38	1	——		——		13 notches.
14 caſt	39	3	——		——		14 notches.
15 caſt	41	0	——		——		15 notches.
16 caſt	42	2	——		——		16 notches.
17 caſt	43	3	——		——		17 notches.
18 caſt	45	0	——		——		18 notches.
19 caſt	46	1	——		——		19 notches.
20 caſt	47	2	——		——		20 notches.

And if they ſhall not be thus aſſized and marked, then on information to a juſtice of the peace, mayor, or other head officer, he ſhall call before him ſix good and lawful men of the town, and ſhall ſwear them truly to inquire and preſent, whether the ſame be of good and ſufficient aſſize; and if they ſhall preſent that any of them is not ſufficient, the ſame ſo being deficient ſhall be forfeited, and be delivered to the overſeers, to be by them diſtributed to the poor. *id. ſ.* 2.

And by the 43 *El. c.* 14. The billets ſhall be meaſured within ſix inches of the midſt; and the ſurpluſage which ſhall happen between any two next meaſures, being above the one, and under the other, ſhall be taken for the benefit of the buyer.

Fuller's earth. See **Woollen manufacture.**

Furze. Burning it in foreſts. See **Burning.**

Game.

THE ſtatutes relating to this title are very numerous, and the ſenſe ſometimes a little perplexed, ſo that perhaps upon a view of the whole, it may ſeem, that about four or five new acts, comprehending the ſeveral heads here under mentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and uſeful.

After having firſt premiſed (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the ſtatute of the 8 *G.* *c.* 19. that where any perſon for any offence againſt any law in being at the making of the ſaid act, for the better preſervation of the game, ſhall be liable to pay any pecuniary penalty or ſum of money, on conviction before a juſtice of the peace, the proſecutor may either proceed to recover the ſame in ſuch manner, or he may ſue for the ſame (before the end of the ſecond term after the offence committed, 26 *G.* 2. *c.* 2.) by action of debt, or on the caſe, bill, plaint, or information, in any court of record at *Weſtminſter*, wherein if he recovers he ſhall have double coſts; (This being premiſed) I will treat of this ſubject under the following heads; containing,

I. Certain preliminary obſervations.

II. The laws concerning gamekeepers.

III. The qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.

IV. Laws for preſerving the four footed game in particular.

V. Laws for preſerving the winged game in particular.

VI. Laws for preſerving the game of fiſh in particular.

Under which three laſt heads are comprehended thoſe reſtrictions which ſeem to concern all perſons whatſoever, whether qualified or not: for altho' a man be qualified to kill game, yet he muſt kill it in a lawful manner, and not in ſuch ways as tend utterly to deſtroy it.

I. Preliminary obſervations.

Foreſt, what.

1. A *foreſt* is a certain territory of woody grounds, and fruitful paſtures, privileged for wild beaſts and fowls of foreſt, chaſe, and warren, to reſt and abide there in the ſafe protection of the king, for his delight and pleaſure: which territory of ground ſo privileged,

vileged, is meered and bounded with unremoveable marks, meers, and boundaries, either known by matter of record, or by preſcription; and alſo repleniſhed with wild beaſts of venary or chaſe, and with great coverts of vert for the ſuccour of the ſaid beaſts there to abide: for the preſervation and continuance of which, there are particular officers, laws, and privileges belonging to the ſame, requiſite for that purpoſe, and proper only to a foreſt, and to no other place. *Manw.* 143.

Note; That *vert* comprehends every thing which bears green leaves in the foreſt. *Manw.* 146.

2. Beaſts of foreſt are properly hart, hind, buck, hare, boar and wolf; but legally, all wild beaſts of venary. 1 *Inſt.* 233. Beaſts of foreſt.

3. *Purlieu* comes from the *French*, *pur*, clear, entire, and exempt; and *lieu*, a place; that is, a place entire, clear, or exempt from the foreſt: and ſignifies thoſe grounds which *Henry* the ſecond, *Richard* the firſt, or king *John* added to their ancient foreſts, over other mens grounds; and were diſafforeſted by the ſtatute of *charta de foreſta*. 4 *Inſt.* 303. *Manw.* 242. Purlieu, what.

But nevertheleſs the *purlieu* as to ſome purpoſes is foreſt ſtill, and is only diſafforeſted as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beaſts, and ſpoil the vert. And if thoſe beaſts do eſcape out of the foreſt into the *purlieu*, the king hath a property in them ſtill againſt any man, but againſt the owners of the woods and lands in which they are; and ſuch owners have a ſpecial property in them *ratione loci*, but yet ſo that they hunt them fairly, and not foreſtall them in their return towards the foreſt. *Manw.* 292.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beaſts of the foreſt in his woods or lands in the *purlieu*, in ſuch caſe he hath a property in them againſt any other man *ratione ſoli* (the king only excepted.) And if he begins the hunting in his own lands, then by reaſon of that property he may purſue his hunting thro' any man's woods or lands, ſo as he doth not enter into any foreſt, chaſe, park, or warren. And if he kill the beaſt in another man's land, and out of ſuch privileged place, he may take and carry away the ſame by reaſon of the firſt property. But if the beaſts recover the foreſt, he muſt call back his dogs, for they are then the king's wild beaſts again. And if he do not call back and rebuke his dogs, and they kill the beaſt in the foreſt, he is a treſpaſſer, tho' himſelf never came within the bounds thereof. But if in hunting towards the foreſt, the dogs faſten on it before it is within the bounds thereof, and the dogs ſtill hanging on are drawn by the deer into the foreſt, and it is killed there, then by reaſon of the firſt property which he had *ratione ſoli*, and alſo by the purſuit and poſſeſſion thereof before it entred the foreſt, he may lawfully enter and take it. *Manw.* 194, ——7.

4. A *chaſe* (from *chaſſer*, to chaſe) is a privileged place for receipt of deer and beaſts of the foreſt, and is of a middle nature betwixt a foreſt and a park. It is commonly leſs than a foreſt, and Chaſe, what.

not

not endowed with ſo many liberties, as officers, laws, courts; and yet is of a larger compaſs than a park, having more officers and game than a park. Every foreſt is a chaſe, but every chaſe is not a foreſt. It differeth from a park in that it is not incloſed; for if it is incloſed, it is a good cauſe of forfeiture; tho' it muſt have certain metes and bounds, but it may be in other mens grounds as well as in one's own. *Read. Game. Manw.* 49.

Beaſts of chaſe. 5. Beaſts of chaſe are the buck, doe, fox, martern, and roe; the two laſt of which are not now in *England*. Manw. 50.

Park, what. 6. A *park* (from the *French*, *parquer*, to incloſe) is a large parcel of ground privileged for wild beaſts of chaſe by the king's grant, or by preſcription. *Read. Game.*

Beaſts of park. 7. The beaſts of park properly extend to the buck, doe, fox; but in a common and legal ſenſe to all the beaſts of the foreſt. *Read. Game.*

Park to be incloſed. 8. A park muſt be incloſed; for if it lies open, it is a good cauſe of ſeizure into the king's hands, as a thing forfeited: and the owner cannot have an action againſt thoſe that hunt in his park, if it lies open. *Read. Game.*

Deer ſhall go to the heir. 9. Deer in a park ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Warren, what. 10. A *warren* is a place privileged by preſcription or grant of the king, for the preſervation of the beaſts and fowl of the warren; *viz.* hares, conies, partridges, and pheaſants. *Read. Game.*

Need not to be incloſed. 11. A free warren may lie open, there being no neceſſity of incloſing it. *Read. Game.*

Conies ſhall go to the heir. 12. Conies in a warren (as hath been ſaid before of deer in the park) ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Licence to erect. 13. It is not lawful for any man to erect a park, chaſe, or warren, without a licence under the great ſeal of the king; becauſe the common law gives no way to matters of pleaſure, for that they bring no profit to the commonwealth. 2 *Inſt.* 199.

But in the caſe of *K.* and *Sir W. Lowther*, *M.* 12 *G.* There was a motion for leave to file an information in nature of a *quo warranto*, againſt Sir *William Lowther*, to ſhew by what authority he had made and ſet up a warren. But it was denied by the court; becauſe it was of a private nature, and therefore proper to be proſecuted only in the name of the attorney general by information, if his majeſty thought fit. And the like motion had been denied before in the caſe of the lord *Liſburn*. L. *Raym.* 1409. *Str.* 637.

Which of theſe is the higheſt franchiſe. 14. A foreſt is the higheſt franchiſe of princely pleaſure; the next to that is a free chaſe; a chaſe in one degree is the ſame as a park, only a park is incloſed, and a chaſe is always open; the next in degree to a free chaſe, is a park; and next unto a park, is the franchiſe of a free warren. *Manw.* 148.

Common in a chaſe. 15. A perſon may have common in a chaſe, as well as in a foreſt; but a foreſt is governed by the foreſt law, and a chaſe and park by the common law. 4 *Inſt.* 314. *Manw.* 49.

Treſpaſs, in what caſe. 16. If I find a pheaſant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reaſon of the

first property which I had in the pheasant *ratione soli*; and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit; and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entring the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same, in the cases of all wild beasts of the forest and chase. *Manw.* 193, 196.

17. Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a publick benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Ja.* 321.

No trespass in following beasts of prey.

II. Concerning gamekeepers.

1. All lords of manors, or other royalties, not under the degree of an esquire, may by writing under their hands and seals (A) authorize one or more gamekeeper or gamekeepers within their respective manors or royalties. 22 & 23 *C.* 2. *c.* 25. *s.* 2.

Who may appoint a gamekeeper.

2. And may impower him thereby, upon their own manors, to kill hare, pheasant, partridge, or any other game:

With power to kill game.

But if the gamekeeper shall, under colour thereof, kill or take the same for the use of the lord, and afterwards sell and dispose thereof without the lord's consent; and be convicted, on complaint of such lord, and on oath of one witness, before one justice; he shall be committed to the house of correction for three months, to be kept to hard labour. 5 *An. c.* 14. *s.* 4.

3. But no lord of a manor shall make above one person to be a gamekeeper within any one manor, with power to kill game. And the name of such person shall be entred with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling:

One gamekeeper in one manor; and to be entred with the clerk of the peace.

And if any other gamekeeper, whose name is not so entred, *who shall not be otherwise qualified* by the laws of this kingdom to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath game, or grouse; he shall on conviction before one justice, on oath of one witness, forfeit for every offence 5*l.* half to the informer, and half to the poor, by distress: for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months. 9 *An. c.* 25. *s.* 1.

Who shall not be otherwise qualified] From these words it seemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entred with the clerk of the peace.

4. And

To be alſo a menial ſervant.

4. And moreover, by the 3 *G. c.* 11. it is further enacted, that no lord of a manor ſhall make any perſon to be a gamekeeper with power to kill game, unleſs ſuch perſon be qualified by the laws of this realm ſo to do; or unleſs ſuch perſon be truly and properly a ſervant to the ſaid lord; or be immediately employed and appointed to take and kill the game for the ſole uſe of the ſaid lord, and not otherwiſe:

And if any perſon, not being qualified by the laws ſo to do, or not being truly and properly a ſervant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the ſole uſe or immediate benefit of the ſaid lord, ſhall under colour or pretence of any power or authority, deputation, or qualification to him granted by any lord of a manor, take or kill any hare, pheaſant, partridge, or other game whatſoever; or ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and deſtroy the game; he ſhall forfeit 5 *l.* in like manner. *ſ.* 1.

Gamekeeper's power to ſearch.

5. The gamekeeper (ſo authorized) may ſearch for dogs and engines, and ſeize the ſame for the uſe of the lord, or deſtroy them. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

But it hath been adjudged, that an authority from the lord of the manor is not of it ſelf ſufficient for this purpoſe, but that he ought to have a warrant from a juſtice of the peace. *Comb.* 183. *Carpenter* and *Adams*. At leaſt it may be ſafe to have ſuch warrant, eſpecially if any houſes are to be entred and ſearched.

For it would give too great a power to the gamekeepers, to leave it in their diſcretion to ſearch what places they ſhall think proper, as alſo to conſtitute them the judges whether ſuch or ſuch a perſon is or is not qualified to kill game. Therefore it is beſt to have a warrant from a juſtice of the peace, after information and oath of the offence firſt made.

III. Qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.

The qualification by eſtate for killing game, in the reign of K. *Richard* the ſecond, was 40*s.* a year; in the reign of K. *James* the firſt it was advanced to 10*l.* a year, and after that in ſome inſtances to 40*l.* a year; and at laſt in the reign of K. *Charles* the ſecond it was raiſed to 100*l.* a year. Not that the laws have become gradually more ſevere; but as the value of money decreaſed, the qualification was raiſed in proportion, the eſtate continuing nearly the ſame; for an eſtate of 40*s.* a year in the reign of K. *Richard* the ſecond was not much inferior to an eſtate of 100*l.* a year in the reign of K. *Charles* the ſecond. And the penalty for deſtroying the game was even more ſevere then than it is now; as I ſhall ſhew. For as thoſe ancient laws relating to the game are ſtill in force, and are generally enacted ſo to be by the ſubſequent ſtatutes, it will be neceſſary in order to have a thorough knowledge of this matter to inſert them in their order; becauſe the penalties

nalties on each being different, the profecutor or juſtices may chuſe which of them they will convict an offender upon. Thus by the ſtatute of the 5 *A.* hereafter following, if a perſon not having 100*l.* a year ſhall keep dogs or engines to deſtroy the game, he ſhall forfeit 5*l.* but if ſuch perſon have not 40*s.* a year, he may upon the ſtatute of *R.* 2. be puniſhed by a year's impriſonment; and ſo of the reſt: provided that no perſon be proſecuted upon more than one act for one offence.

1. The firſt qualification relating to the game, was in the 13th year of the reign of *R.* 2. by which it is enacted, that no layman which hath not lands or tenements of 40*s.* a year, nor clergyman if he be not advanced to 10*l.* a year, ſhall have or keep any greyhound, hound, nor other dog to hunt; nor ſhall uſe fyrets, heys, nets, harepipes, nor cords, nor other engines for to take or deſtroy deer, hares, nor conies, nor other gentlemens game: on pain of a year's impriſonment. And the juſtices of the peace (that is, in their ſeſſions) ſhall enquire of the offenders in this behalf, and puniſh them by the pain aforeſaid. 13 *R.* 2. *ſt.* 1. *c.* 13. 40*s.* a year.

2. The next qualification by eſtate or degree to kill game, was by a ſtatute in the 1 *J.* whereby it is enacted, that every perſon who ſhall keep any greyhound for courſing of deer or hare, or ſetting dog or net to take pheaſants or partridges (except he be ſeiſed, in his own right or the right of his wife, of 10*l.* a year eſtate of inheritance, or 30*l.* a year of a lives eſtate, or goods to the value of 200*l.* or be the ſon of a knight or lord, or the ſon and heir apparent of an eſquire) and be thereof convicted, by confeſſion, or oath of two witneſſes, before two juſtices, he ſhall be committed to gaol three months, unleſs upon conviction he pay 20*s.* to the churchwardens for the uſe of the poor, or after one month after his commitment he become bound by recognizance with two ſureties before two juſtices, in 20*l.* a piece, not to offend again in like manner. 1 *J.* *c.* 27. *ſ.* 3. 10*l.* a year.

3. The next qualification relates to deer and conies only, in the 3 *J.* *c.* 13. by which it is enacted, that if any perſon not having hereditaments of 40*l.* a year, or not worth in goods 200*l.* ſhall uſe any gun or bow to kill any deer or conies; or ſhall keep any buckſtall, nets, or coney dogs (except he have grounds incloſed, and uſed for the keeping of deer or conies, the increaſing of which ſaid conies ſhall amount to the value of 40*s.* a year; or keepers or warreners in their parks, warrens, or grounds); in ſuch caſe, any perſon having lands or hereditaments of 100*l.* a year in fee, or for life, in his own right or the right of his wife, may take from ſuch perſon to his own uſe for ever ſuch guns, bows, buckſtalls, nets, and coney dogs. 3 *J.* *c.* 13. *ſ.* 5. 40*l.* a year.

4. The next qualification relates to pheaſants and partridges only, and is as follows: Every free warrener, lord of a manor, or freeholder ſeiſed in his own or his wife's right, of 40*l.* a year of inheritance, or lives eſtate of 80*l.* or worth in goods 400*l.* may take pheaſants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt *Michaelmas* and *Chriſtmas* yearly. 7 *J.* *c.* 11. *ſ.* 7. 40*l.* a year.

5. The

100l. a year.

5. The laſt general qualification by eſtate or degree to kill game, and which is now moſt to be regarded, is in the 22 & 23 C. 2. *c.* 25. by which it is enacted, that *every perſon, not having lands and tenements, or ſome other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100l. per annum, *or for term of life, or having leaſe or leaſes of* 99 *years, or for any longer term, of the clear yearly value of* 150l. *(other than the ſon and heir apparent of an eſquire, or other perſon of higher degree, and the owners and keepers of foreſts, parks, chaſes, or warrens, being ſtocked with deer or conies for their neceſſary uſe, in reſpect of the ſaid foreſts, parks, chaſes, or warrens) is hereby declared to be a perſon by the laws of this realm, not allowed to have or keep for himſelf or any other perſon, any guns, bows, greyhounds, ſetting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, ſnares, or other engines for the taking and killing of game.* ſ. 3.

Searching for dogs and engines.

6. *And the gamekeeper, or any other perſon (authorized by warrant* (B) *of a juſtice of the peace) may in the day time ſearch the houſes, outhouſes, or other places of any ſuch perſon prohibited by this act to keep or uſe the ſame, as upon good ground ſhall be ſuſpected to have or keep in his cuſtody any guns, bows, greyhounds, ſetting dogs, ferrets, coney dogs, or other dogs to deſtroy hares or conies, hays, tramels, or other nets, lowbels, harepipes, ſnares, or other engines aforeſaid, and the ſame to ſeize, and keep, for the uſe of the lord of the manor, or otherwiſe to cut in pieces or deſtroy.* 22 & 23 C. 2. c. 25. ſ. 2.

20s. penalty for keeping dogs and engines.

7. And if any unqualified perſon ſhall have, keep, or uſe any bows, greyhounds, ſetting dogs, ferrets, coney dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, ſnares, or any other inſtruments for deſtruction of fiſh, fowl, or other game; and ſhall not give a good account before a juſtice, to the ſatisfaction of ſuch juſtice how he came by the ſame, or elſe ſhall not in ſome convenient time (to be ſet by ſuch juſtice) produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof; he ſhall forfeit for every offence not under 5s. nor above 20s. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour. And if any perſon ſo produced or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. 4 & 5 *W.* *c.* 23. *ſ.* 3.

And all lords of manors and their gamekeepers may within their manors oppoſe and reſiſt ſuch offender, in the night time, in the ſame manner as if the fact had been committed in any ancient chaſe, park, or warren incloſed. *ſ.* 4.

And no *certiorari* ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in 50*l.* with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed, or *procedendo* granted, full

coſts

costs and charges; and in default thereof, the justice shall proceed to the execution of the conviction. *s.* 7.

5*l.* penalty for keeping dogs and engines; and the same to be seized.

8. But by a subsequent statute 5 *An. c.* 14. *If any person, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engines to kill and destroy the game, and shall be thereof convicted* (C D) *on the oath of one credible witness, before one justice, he shall forfeit* 5*l. half to the informer, and half to the poor, by distress* (E); *for want of distress, to be sent to the house of correction* (F) *for three months for the first offence, and for every other offence four months:*

And any justice, and lord within his manor, may take away such dogs, nets, or other engines, which shall be in the power or custody of any person not qualified. s. 4.

Not qualified by the laws of this realm] On a conviction on this statute, exception was taken, that the defendant not being a person so and so qualified, and enumerating distinctly the several qualifications in 22 & 23 C. 2. omitted a new qualification allowed by this act, namely, that he was not a person authorized by a lord (or lady) of a manor to kill game for his use. And by the court; Had it been generally laid thus, that he not being a person qualified according to law, and so on, it had been enough; but the qualifications being distinctly and severally mentioned, the omission of one is fatal. 10 *Mod.* 26. *T.* 10 *An.* 2. and *Matthews.*

But in the case of *K.* and *Marriott*, *M.* 4 *G.* There was a conviction for keeping a greyhound; reciting that one *William Toune* came and informed, that the defendant being a person not qualified to keep a greyhound, did nevertheless keep one at such a place, and therewith killed several hares; and that he being summoned did appear, and being asked what he had to say, offered nothing in excuse, and therefore the justice convicted him. It was objected, that the justice should set out, why the defendant is not a qualified person, as that he is not the son of an esquire, nor has 100*l.* a year in his own or his wife's right: For he ought not to make himself the sole judge, but give the reasons at large. *Parker* Ch. J. seemed to think the conviction would be good, having followed the words of the statute, and that if the defendant was qualified, he ought to have shewn it before the justice, being summoned for that purpose. *Eyre* J. started an objection, that it was not the justice that had taken upon him to say the defendant was not qualified; but only the witness; for the conviction runs, that the witness being sworn saith, that the defendant *being a person no way qualified* did such a day keep a greyhound; so that it appears, the witness has given the law to the justice, and takes upon himself to judge of the defendant's qualifications, and the justice is only made use of as an instrument, to reduce the opinion of the witness into a conviction. By *Parker* Ch. J. the *being not qualified* should be the conclusion of the justice, and not the words of the witness; for he ought not to swear generally a man is not qualified, and such a general proof will not be good: This is only an invention, to support a conviction in

general terms, which would be bad if the particular facts were alledged. *Pratt* J. Where the juſtices have a ſummary juriſdiction, and no appeal lies (as in this caſe), we muſt keep them up ſtrictly to the law; and I ſhould be glad if we could make them ſet out the whole particularly. The caſe was adjourned. And afterwards *Pengelly* ſerjeant mentioned two caſes, *Q.* and *Hayward*, *E.* 12 *An.* There it was, *not being qualified, licenſed, or authorized to keep any engine*; and it was quaſhed. The other was the ſame term, and quaſhed, becauſe no qualifications were mentioned. And towards the end of the term this conviction was quaſhed; and the principal reaſon declared to be, becauſe the witneſſes had taken upon themſelves, to judge of the qualifications. *Str.* 66.

And in the caſe of *K.* and *Bryan*, *M.* 12 *G.* 2. which was a conviction on the gin act, exception was taken, that there was no averment, that it was not ſold to be uſed in medicine: and the caſes on the game act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game. On the other hand, it was inſiſted, that the reaſon of that was, becauſe thoſe were in the enacting clauſe, whereas this about medicine comes in by way of proviſo, and is by way of defence to be ſhewn on the defendant's part. And for that purpoſe was cited *K.* and *Theed*, *M.* 11 *G.* where in a conviction for obſtructing an exciſe officer on the 8 *An. c.* 9. it was objected, that it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but it was held to be well, and that its being in the night ſhould have been ſhewn on the defendant's part. And by the court, This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. And the conviction was confirmed. *Str.* 1101.

Nevertheleſs, after all, perhaps it may require ſome conſideration, whether it may not be moſt fitting, that the qualification, if there is any, ſhould come from the defendant himſelf, when he is aſked what he hath to ſay, why he ſhould not be convicted. For it ſeemeth ordinarily impoſſible for a witneſs to ſwear to ſo many negatives as are implied in the want of a qualification; as that the perſon had not then 100 *l.* a year of freehold, nor 150 *l.* a year held by leaſe for 99 years or upwards; that he was not, at the time of the offence committed, ſon and heir apparent of an eſquire or perſon of higher degree; nor the keeper of any foreſt, park, chaſe, or warren; nor gamekeeper to a lord or lady of a manor. Which particulars may cauſe it to be neceſſary, for the witneſs to have ſeen the rent roll of ſuch perſon's eſtate, and his title deeds, and to underſtand the nature and law of tenures, and what annuities, rent charges, or other incumbrances do affect ſuch eſtate; alſo it may require ſome knowledge of heraldry and pedigrees, ſo far forth as to know, who ſhall or ſhall not be deemed an *eſquire* (which perhaps may puzzle a wiſer man than a common informer), or perſon of higher degree, and whether or no the defendant is ſon and heir apparent to any ſuch perſon; alſo

it may be requiſite for the witneſs to know, what by any ordinary means he cannot come to the knowledge of, namely, that the defendant is not keeper of the foreſt, park, chaſe, or warren within which the game might be killed, and what are the boundaries of ſuch foreſt, chaſe, or warren; and he muſt have attended the keeper of the rolls of the quarter ſeſſions, to know whether the defendant is not inrolled gamekeeper of the manor within which ſuch game might be killed, and whether there is any other inrolled before him for killing game within the ſame manor, and muſt know alſo what are the boundaries of ſuch manor. Theſe and many other ſuch like particulars may happen to be included, in that general ſwearing that a perſon is not qualified to kill game. Therefore it ſhould ſeem to be ſufficient, that the witneſs ſwear to the fact only of killing game, or keeping inſtruments ſo to do, and conſequently to ſet forth that and no more in the conviction, but that further the defendant did alledge nothing in his defence, why he ſhould not be convicted; or if he pleaded any thing of qualification, then to ſet forth that alſo ſpecially, that the court may judge thereupon, whether or no he was qualified by the laws of this realm.

Shall keep or uſe] *H.* 8 *G. K.* and *Filer*. Conviction for *keeping* a lurcher to deſtroy game, not being qualified. Exception was taken, that it was not ſhewn he *uſed* the dog to deſtroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, The ſtatute is in the disjunctive, *keep* or *uſe*; ſo that the bare *keeping* a lurcher is an offence; and ſo it was determined in the caſe of *K.* and *King*, *E.* 3 *G.* which was a conviction for keeping a gun; and it was not doubted by the court, whether the *keeping* was not enough to be ſhewn, but the only queſtion they made was, whether a gun was ſuch an engine as is within that ſtatute: and in that caſe a difference was taken, as to the keeping a *dog*, which could only be to deſtroy the game; and the keeping a *gun*, which a man might do for the defence of his houſe. And the conviction was confirmed. *Str.* 496.

Uſe] In the caſe of *K.* and *King* aforeſaid, *Parker* Ch. J. ſaid, that walking about with intent to kill game, is evidence of *uſing* the inſtrument for that purpoſe. *Seſſ. C. V.* 1. 88.

Any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engines] *H.* 13 *G.* 2. *Hooker* and *Wilks*. An action of debt was brought on the 8 *G. c.* 19. for the penalty of 30 *l.* by uſing a *hound* to deſtroy game. And after a verdict for the plaintiff, the judgment was arreſted; for the ſtatute of the 5 *An. c.* 14. has not the word *hound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. The ſtatute of the 22 & 23 *C.* 2. *c.* 25. has indeed general words, *or any other dogs to deſtroy game*; but this is not a conviction on that ſtatute. *Str.* 1126.

Nor indeed could it have been a conviction on that ſtatute, for any penalty in certain for killing and deſtroying the game; for

the ſtatute of the 22 & 23 *C.* 2. doth not inflict a general penalty, upon perſons unqualified who ſhall kill and deſtroy the game; but only declares, who ſhall or ſhall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to ſeize the dogs, nets, and other engines of ſuch unqualified perſons. But if the defendant did kill the game, and had the ſame in his cuſtody; he might have been proſecuted for the penalty of 20*s.* for ſuch offence, by the ſtatute of the 4 & 5 *W.* hereafter following.—But then the conſequence of all this will be, that it is not penal barely to *keep* a *hound* on this ſtatute of the 5 *An.* but if any unqualified perſon ſhall do ſo, the gamekeepers or others, authorized by a juſtice's warrant, may ſeize and keep or deſtroy the ſame, by the aforeſaid ſtatute of the 22 & 23 *C.* 2.

Any other engines] *T.* 11 *G.* 2. *K.* and *Gardiner.* It was moved to quaſh a conviction, for unlawfully having and keeping a *gun*, being an engine or inſtrument for deſtroying the game. And it was urged, that this is no ſufficient charge within this act, or any other of the laws relating to the game: For it is not ſaid, that the defendant *uſed* the gun for the deſtruction of game; and a gun is not an inſtrument ſo far appropriated to killing game, as that it is criminal for a perſon to have one in his cuſtody only: And it would have been altogether as well, if it had been ſaid, that the defendant had in his cuſtody a *cane* for the deſtruction of the game, which may poſſibly be uſed for that purpoſe. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be uſed in, the deſtroying of game. A gun is an engine, not for killing the game, but for the defence of a man's houſe. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the ſtatute is to be conſtrued ſo largely, as to extend to the bare having of any inſtrument, that may poſſibly be uſed in deſtroying game, it will be attended with very great inconvenience; there being ſcarce any, though ever ſo uſeful, but what may be applied to that purpoſe. And though a gun may be uſed in deſtroying game, and when it is ſo, doth then fall within the words of the act; yet as it is an inſtrument proper, and frequently neceſſary to be kept and uſed for other purpoſes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the deſtruction of game, that is prohibited by the act: but otherwiſe it is of lurchers, harepipes, and ſuch like, which are peculiarly fitted or diſpoſed for killing game. The bare *keeping* of theſe for the purpoſe of killing game, is ſufficient to convict an offender, and it will be incumbent upon the defendant himſelf to prove, that he kept them for other purpoſes. And the conviction therefore was quaſhed. After which, *Strange* ſolicitor general ſaid, that in the caſe of *K.* and *King*, *E.* 3 *G.* Lord *Macclesfield* ſaid, that he was in the houſe of commons when this act was made, and he himſelf objected to the inſerting of the word *gun* therein, becauſe it might

be attended with great inconvenience. *Andr.* 255. *Seſſ. C. V.* 2. 204. *Str.* 1098.

And indeed it was not at all neceſſary to inſert a gun in this act; ſince the carrying of a gun is prohibited under double the penalty, by the ſtatute of *H.* 8. hereafter following.

And ſhall be thereof convicted] *H.* 6 *G. K.* and *Johnſon.* Conviction for keeping a gun, not being qualified. Exception was taken, that here was not a reaſonable *ſummons*; for it was made on the fifth of *October*, to appear the ſame day, which might be impoſſible upon account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning: then it is to appear *at the pariſh aforeſaid*, whereas there are two pariſhes mentioned before; ſo the man may have gone to one, whilſt they were convicting him at the other. It was anſwered, that the defendant appeared at the time and made defence, ſo that cures all defects in the ſummons. And by the court, The anſwer is right. *Str.* 261.

On the oath of one credible witneſs] *H.* 9 *G. K.* and *Gage.* The defendant was convicted for uſing a greyhound in killing hares. Exception was taken to the conviction, that the ſtatute hath only given the juſtices juriſdiction to convict upon the oath of one or more credible witneſſes, whereas this was upon his own confeſſion, which it was inſiſted the juſtices had no power to take. But by the court, The conviction muſt be confirmed. The intent of mentioning the oath of one witneſs, was only to direct the juſtices, that they ſhould not convict on leſs evidence: ſuppoſe the confeſſion had not been before the juſtices, but before two witneſſes who had ſworn it; that would be convicting him on the oaths of witneſſes, and yet the evidence would not be ſo ſtrong as this. Here the juſtices had a better evidence, than the oath of any ſingle witneſs; and it is a monſtrous thing to ſay, that a better ſort of evidence ſhall not do. *Str.* 546.

Credible witneſs] *M.* 2 *G.* 2. *K.* and *Stone.* A conviction was quaſhed, becauſe the informer was the witneſs; divers convictions having been quaſhed for the ſame reaſon before. L. *Raym.* 1545. The ſame adjudged in the caſe of *K.* and *Blaney*, *T.* 11 *G.* 2. *Andr.* 240.

Before one juſtice] *H.* 12 *G. K.* and *Buck.* It was moved, to quaſh an *indictment* for killing a hare, this not being a matter indictable, the ſtatute appointing a ſummary proceeding before juſtices of the peace; and a caſe was cited *K.* and *James*, *T.* 1 *G.* where an indictment for keeping an alehouſe was quaſhed, becauſe the ſtatute of the 3 *C. c.* 3. had directed a particular remedy. And by the court, The indictment muſt be quaſhed. *Str.* 679.

Shall forfeit 5 *l.*] *T.* 10 *An. Q.* and *Matthews.* On a conviction, exception was taken, that the perſon was charged with ſo many 5 *l.* as he had killed hares in the ſame day. And the court was of opinion, that the offence for which the ſtatute gave the forfeiture, was the keeping dogs and engines, and not killing

the hares. If a man not qualified goes a hunting, and kills never ſo many hares on the ſame day, he would forfeit but one 5 *l.* for it is but one offence; but if a man keeps dogs, and goes a hunting ſeveral days, and kills hares, if it was thus laid, that he ſuch a day kept dogs and killed, and then again ſuch a day, by laying thus ſeverally, the offence is ſevered, and he ſhall forfeit 5 *l.* for each offence. 10 *Mod.* 26.

By diſtreſs] *T.* 9 *G. K.* and *Burchett.* The court ordered an attachment (unleſs cauſe ſhewn) againſt the town clerk of *Guildford*, and a defendant convicted on the game act, for granting and ſuing out a replevin of goods diſtrained for the penalty. But on ſhewing cauſe the next term, when *Eyre* J. only was preſent, he diſcharged the rule, becauſe it was only a contempt to the inferior juriſdiction of the juſtices, and in that caſe the king's bench never interpoſes. *Str.* 567.

For want of diſtreſs, to be ſent to the houſe of correction] *T.* 12 *G. Hill* and *Bateman.* Before *Raymond* Ch. J. at *Weſtminſter.* The defendant *Bateman*, being a juſtice of the peace, had convicted the plaintiff for deſtroying game, and though (as it was proved) the plaintiff had effects of his own, which might have been diſtrained, which were ſufficient to anſwer the penalty he had incurred, yet the defendant ſent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of treſpaſs and falſe impriſonment being brought againſt *Bateman* for this commitment, the chief juſtice was of opinion, that the action well lay. And it was agreed, that where actions of this kind are brought againſt juſtices of the peace, they are obliged to ſhew the regularity of their convictions; and the informations, *&c.* laid before them, upon which their convictions are grounded, muſt be produced and proved in court. *Str.* 710.

And [*no*] certiorari *ſhall be allowed to remove the conviction or other proceedings on this act, unleſs the party convicted ſhall before the allowance thereof become bound* (G) *to the proſecutor in* 50*l. with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts and charges in* 14 *days after the conviction* [*confirmed*], *or* procedendo *granted. And in default thereof, the juſtice ſhall proceed in execution of the conviction in ſuch manner as if no* certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

Note; The word [*no*] is inſerted inſtead of the words [*if any*] which are in the act, ſince that word ſeemeth neceſſary to make up the ſenſe; and the word [*confirmed*] is added for the like reaſon. And indeed there have been too many inadvertencies in the drawing up of this act; for there is falſe grammar in no fewer than ſix places, beſides other miſtakes.

Search for game; with 20 s. penalty for having it.

9. *And the conſtable, authorized by a juſtice's warrant, ſhall enter into and ſearch (in ſuch manner and with ſuch power as in caſe where goods are ſtolen, or ſuſpected to be ſtolen) the houſes, outhouſes, or other places belonging to ſuch houſes of ſuſpected perſons not qualified: And if any hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game, ſhall (upon ſuch ſearch, or otherwiſe) be found, the offender ſhall be carried before a juſtice; and if ſuch perſon do not*

give

give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time, to be ſet by the juſtice, produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and upon ſuch conviction ſhall forfeit for every hare, partridge, pheaſant, fiſh, fowl, or other game, any ſum not under 5 s. *and not exceeding* 20 s. *half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour.* 4 & 5 W. c. 23. ſ. 3.

Or other game] Rabbets killed in a private warren, are not game within this act. L. *Raym.* 151.

For every hare, fiſh, fowl, or other game] Theſe words are very penal.

And if any perſon ſo produced, or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. id. ſ. 3.

And no certiorari *ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in* 50 l. *with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed or* procedendo *granted, full coſts and charges; and in default thereof, the juſtice to proceed to the execution of the conviction.* id. ſ. 7.

10. *If any higler, chapman, carrier, innkeeper, victualler, or alehouſekeeper, ſhall have in his cuſtody or poſſeſſion, or ſhall buy, ſell, or offer to ſell any hare, pheaſant, partridge, moor, heath-game, or grouſe, unleſs ſuch game in the hands of ſuch carrier be ſent up by ſome perſon qualified; (*or, *if any perſon whatſoever, whether qualified or not, ſhall ſell, expoſe, or offer to ſale any hare, pheaſant, partridge, moor, heath-game, or grouſe,* 28 G. 2. c. 12.) *he ſhall be carried before a juſtice where the offence is committed* (H); *and being convicted thereof (in three months after the offence) on view, or oath of one witneſs, he ſhall forfeit for every hare, pheaſant, partridge, moor, heath-game, or grouſe, the ſum of* 5 l. *half to the informer, and half to the poor, by diſtreſs* (I): *for want of diſtreſs, to be committed* (K) *to the houſe of correction for the firſt offence three months, and for every other offence four months.* 5 An. c. 14. ſ. 2. Carriers having game.

Convicted — on view, or oath of one witneſs] *Confeſſion*, tho' not mentioned in the ſtatute, being ſtronger evidence than the oath of one witneſs, was adjudged to be good. *H.* 9 G. *K.* and *Gage. Dalt.* 109, 162.

And no certiorari *ſhall be allowed to remove the conviction or other proceedings, unleſs the party convicted ſhall before the allowance thereof, become bound to the proſecutor in* 50 l. *with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts in* 14 *days after the conviction confirmed, or* procedendo *granted. And in de-*

fault thereof, the juſtice ſhall proceed in execution of the conviction, in ſuch manner as if no certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

And if any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſhall be found in the ſhop, houſe, or poſſeſſion of any poulterer, ſaleſman, fiſhmonger, cook, or paſtry cook, or of any perſon not qualified in his own right to kill game, or intitled thereto under ſome perſon ſo qualified, it ſhall be deemed an expoſing thereof to ſale. 9 An. c. 25. ſ. 2. 28 G. 2. c. 12.

Found in the ſhop] This muſt be underſtood of proof that it was found. Q. and *George*, 6 *Mod.* 57.

And any juſtice of the peace, and lord within his manor, may take away any ſuch hare, pheaſant, partridge, moor, heath-game, or grouſe, or any other game, from any ſuch higler, chapman, innkeeper, victualler, or carrier, or any other perſon not qualified, which ſhall be found in his cuſtody or poſſeſſion. 5 An. c. 14. ſ. 4.

And any perſon that ſhall deſtroy, ſell, or buy any hare, pheaſant, moor, heath-game, or grouſe, and ſhall in three months make diſcovery of any higler, chapman, carrier, innkeeper, alehouſekeeper, or victualler, that hath bought or ſold, or offered to buy or ſell, or had in their poſſeſſion any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſo as any one ſhall be convicted; ſuch diſcoverer ſhall be diſcharged of the pains and penalties hereby enacted for killing or ſelling ſuch game, and ſhall receive the ſame benefit as any other informer. 5 An. c. 14. ſ. 3.

Inferior tradeſmen killing game.

11. And whereas great miſchiefs do enſue by inferior tradeſmen, apprentices and other diſſolute perſons, neglecting their trades and employments, who follow hunting, fiſhing, and other game, to the ruin of themſelves, and damage of their neighbours, therefore if any ſuch perſon ſhall preſume to hunt, hawk, fiſh, or fowl (unleſs in company with the maſter of ſuch apprentice duly qualified); he ſhall not only be ſubject to the other penalties, but if he be proſecuted for treſpaſs, in coming on any perſon's land, and be found guilty, the plaintiff ſhall not only recover damages againſt him, but full coſts. 4 & 5 *W. c.* 23. *ſ.* 10.

Soldiers.

12. By the yearly mutiny acts, if any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, deſtroy any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof, on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5 *l.* to the poor, and the commanding officer upon the place, for every offence committed by any ſoldier under his command, ſhall forfeit 20 *s.* in like manner. And if, upon conviction by the juſtices, and demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two days pay the ſaid penalties, he ſhall forfeit his commiſſion.

The ſtatute of 33 H. 8. concerning guns.

13. Here next followeth the ſtatute of the 33 *H.* 8. *c.* 6. concerning guns: by which it is enacted as follows;

(1) No perſon, except he in his own right, or in the right of his wife, or ſome other to his uſe, have lands, tenements, fees, annuities, or offices, to the yearly value of 100 *l.* ſhall ſhoot in any

any croſs bow, hand gun, hagbut, or demihake, otherwiſe than as hereafter is expreſſed; on pain of 10 *l.* to be levied and diſpoſed of in any of the three ways hereafter mentioned.

(2) And no perſon, of what eſtate or degree ſoever, ſhall ſhoot in, carry, keep, uſe, or have in his houſe or elſewhere, any hand-gun, not being in the ſtock and gun of the length of one yard; or any hagbut or demihake, not being in the ſtock and gun of the length of three quarters of a yard; on the like pain of 10 *l.*

And every perſon having 100 *l.* a year as above, may ſeize every ſuch croſs bow; and every ſuch hand-gun, hagbut, and demihake being ſo deficient in length; and he may keep the croſs bow to his own uſe; but he ſhall in 20 days after ſeizure break and deſtroy the hand-guns, hagbuts, and demihakes, on pain of 40 *s.* in like manner, for every gun ſo ſeized, and not broken and deſtroyed; and the ſame ſo broken and deſtroyed he may keep to his own uſe.

(4) And no perſon, not being qualified as above, ſhall carry or have in his journey, going or riding in the king's highways or elſewhere, any croſs bow bent, or gun charged or furniſhed with powder, fire, or touch for the ſame, except in time and ſervice of war; on pain of 10 *l.* in like manner.

(5) And no perſon ſhall ſhoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the ſame, except it be at a butt or bank of earth in place convenient, or for defence of his perſon or houſe; on pain of 10 *l.* in like manner.

(6) And no perſon ſhall command his ſervant to ſhoot in any croſs bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 10 *l.* in like manner.

(7) But all gentlemen, yeomen, and ſervingmen of lords, knights, eſquires, and gentlemen; and all inhabitants of cities, boroughs, and market towns, may ſhoot with any hand-gun, demihake, or hagbut, of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every ſuch lord, knight, eſquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have and keep in their houſes any ſuch hand-gun, hagbut, or demihake, of the length aforeſaid, to the intent only to uſe or ſhoot in the ſame at a butt or bank of earth.

And every perſon inhabiting in a houſe two furlongs from any city, borough, or town, may keep and have in his houſe, for the only defence of the ſame, hand-guns, hagbuts, and demihakes, of the length abovementioned; and to uſe and exerciſe to ſhoot in the ſame at any butt or bank of earth near to his houſe, and not otherwiſe.

And except makers and ſellers of the ſame, having them for that purpoſe only, and being of the length above.

Alſo this act ſhall not extend to perſons inhabiting within five miles of the ſea; ſo that they ſhoot not at any deer, heron, ſhovelard, pheaſant, partridge, wild ſwine, or wild elk.

Alſo

Alſo this act ſhall not extend to ſervants carrying the ſame by their maſters command, ſo that they ſhoot not at any game.

Nor to any owner of a ſhip for having or keeping them, of what length ſoever, to be uſed in the ſhip only.

(Nor to perſons licenſed by the ſeſſions to ſhoot hawks meat, ſo as they ſhoot no game, and ſo that they ſhoot not within 600 paces of a hernery, nor within 100 paces of a pigeon houſe, nor in another man's park, foreſt, or chaſe. 1 *J.* *c.* 27. *ſ.* 7.

And except the ſheriff, who may carry a gun in the execution of his office. 5 *Co.* 72.)

(8) And if any perſon ſee or find any one offending or doing contrary to this act, he may arreſt, and bring or convey him to the next juſtice of the county where he is found offending; who ſhall upon *due examination and proof* thereof made before him, by his diſcretion have full power to commit (L) the offender to the next gaol, there to remain till ſuch time as the ſaid penalty or forfeiture ſhall be truly contented and paid by the ſaid offender; half to the king, and half to the firſt bringer or conveyer of the ſaid offender to the juſtice.

Which *due examination and proof* aforeſaid, is intended not to be by a jury, but by witneſſes. 1 *Ventr.* 33.

Mr. *Dalton* ſays, foraſmuch as in this caſe the juſtice hath the whole matter committed to himſelf, and the offenders remain convict upon his examination and proof of witneſs made before him; therefore he ought to be circumſpect in his examination, as alſo in his mittimus; and farther to make a record (M) of the matter, in writing under his hand, and alſo to ſend the eſtreat of it into the exchequer, whereby the king's duty may be levied. *Dalt.* *c.* 47.

In the conviction, it is not ſufficient to ſay generally that he had not 100*l.* a year, but the time muſt be certainly alledged, namely, that the defendant on the day and year aforeſaid (when the offence was committed) had not 100*l.* a year. 3 *Mod.* 280.

And upon ſuch conviction, it hath been adjudged, that a writ of error doth not lie. 1 *Ven.* 33.

(9) Alſo the juſtices in ſeſſions may inquire of, hear and determine the ſaid offences, ſo that no leſs fine than 10*l.* be aſſeſſed upon *preſentment* and conviction, to be levied in ſuch caſe to the king's uſe only.

And this may alſo be upon *indictment*. *Dalt.* *c.* 47.

And if the jury ſhall wilfully conceal any the ſaid offences, the court may charge another jury to enquire of ſuch concealment; and if it be ſo found, the firſt jury ſhall forfeit to the king every one 20*s.*

(10) Alſo the leet may inquire of, hear and determine the ſame; in which caſe, half the forfeiture ſhall upon preſentment and conviction be levied to the king's uſe; and one moiety of the other half to the owner of the leet, by diſtreſs or action of debt; and the other moiety to him that will ſue in any of the king's courts.

And if the jury ſhall wilfully conceal an offence, the ſteward may charge another jury to enquire of the concealment; and if it be

be found, the firſt jury ſhall forfeit 20 *s.* each; half to the owner of the leet, by diſtreſs or action of debt; and half to him that ſhall ſue in any of the king's courts.

(11) But no perſon ſhall be proſecuted but within a year, if it is by the king; and within half a year, if by any other perſon.

IV. Laws for preſerving the four footed game in particular.

Which ſaid laws, as hath been ſaid, do ſeem to concern all perſons whatſoever, whether qualified or not.

Now the four footed game, or the game of beaſts, are of three kinds, *viz.*

I. Deer.
II. Hares.
III. Conies.

I. Of deer.

There have been many laws from time to time enacted againſt deer ſtealers; which being not ſo much altered, as inforced by the ſubſequent ſtatutes, except only in increaſing the penalties, it may be proper to inſert them all in their order; and the rather, becauſe an offender, as it ſeemeth, may ſtill be convicted upon any one of them; and it is generally provided, that ſuch conviction upon one ſtatute, ſhall be as a bar to all the reſt.

Three years impriſonment and fine.

1. The firſt ſtatute is in the 3 *Ed.* 1. *c.* 20. which enacts, that if *treſpaſſers in parks* be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs, and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof,) and then ſhall find good ſurety that after they ſhall not commit the like treſpaſs: and if they have not whereof to make fine, after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety, they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit.

Treſpaſſers] This is, when a man either chaſeth in a park, or endeavours to kill ſome of the game thereof. 2 *Inſt.* 199.

In parks] This act, becauſe it is very penal, is to be underſtood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are required, 1. A liberty, either by grant or preſcription. 2. Incloſure, by pale, wall or hedge. And 3. Beaſts ſavages of the park. 2 *Inſt.* 199.

They may be lawfully reſiſted.

2. The next ſtatute is that intitled *De malefactoribus in parcis*, 21 Ed. 1. ſt. 2. which enacts, that if any foreſter, or parker, ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do continue their malice, and diſobeying the king's peace do flee, or defend themſelves with force and arms; altho' ſuch foreſter, parker, or their aſſiſtants,

ſiſtants, do kill ſuch offenders, they ſhall not be troubled upon the ſame.

By night, or diſguiſed, and concealing the ſame; felony.

3. The next ſtatute makes hunting by night, or in diſguiſe, and concealing the ſame, felony; but within the benefit of clergy; as follows;

When *information* ſhall be made, of any unlawful hunting, in any *foreſt or park*, by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon to be ſuſpected thereof, he may make a warrant to take and arreſt the perſon, and to have him before the maker of the warrant, or any other of the ſaid counſel, or juſtices of the peace: who may by their diſcretion examine him of the ſaid hunting, and of the ſaid doers in that behalf: And if the ſame perſon *wilfully conceal* the ſaid huntings, or any perſon with him defective therein, that then the ſame concealment be, againſt every ſuch perſon ſo concealing, felony. But if he then confeſs the truth, and all that he ſhall be examined of, and knoweth in that behalf, then the ſaid offences of hunting by him done, ſhall be but treſpaſs finable at the next general ſeſſions. And if any reſcous or diſobeyſance be made to any perſon having authority to execute the warrant, by any perſon the which ſo ſhould be arreſted, ſo that the execution of the warrant thereby be not had, then the ſaid reſcous and diſobeyſance ſhall be felony. And if any perſon ſhall be convict of any ſuch huntings, with painted faces, vizors, or otherwiſe diſguiſed, to the intent they ſhould not be known, or of unlawful hunting in time of night, then the ſame perſon ſo convict, to have like punition as he ſhould have if he were convict of felony. 1 *H.* 7. *c.* 7.

When information ſhall be made] This information muſt ſhew at leaſt juſt cauſe of ſuſpicion; and it muſt be taken in writing, becauſe it is the ground of the warrant. 3 *Inſt. c.* 21.

In any foreſt or park] This doth not extend to a chaſe, nor to any foreſt or park in uſe or reputation, which are not ſo in law. 3 *Inſt. c.* 21.

Wilfully conceal] Lord *Coke*, who is a lover of the common law, and is jealous of every violation of it, ſeemeth to be out of humour with this act, and calls it an ill penned law. He obſerves it is the firſt that was made for the making of any hunting felony, againſt that excellent and equal branch of *charta de foreſta*, *nullus de cætero vitam vel membra amittat pro venatione noſtra*; and that this, and other old ſtatutes concerning the foreſt, are called the good old laws and cuſtoms, and commanded to be obſerved; and therefore this new act is too ſevere for wild beaſts, whereof there can be no felony at the common law. And therefore the judges (he ſays) have made a favourable conſtruction of it, as is ſet forth in the following notable report:

M. 19 & 20 *El.* In the king's bench. *Gerrard* the *queen*'s attorney general (who was a grave and reverend man) ſaid openly, that it had been reſolved by the judges upon this ſtatute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth *conceal* it, yet this is upon

upon the conſtruction of the whole act no felony. For the firſt clauſe concerning the concealment, and the laſt clauſe concerning the fact it ſelf, muſt be coupled or joined by conſtruction together; that is to ſay, If any perſon be convict of ſuch hunting with painted face, or of unlawful hunting in the night, this conviction muſt be upon not guilty pleaded; which the judges expounded to be the concealment intended in the firſt branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counſel or a juſtice of the peace, which may lie in averment, ſo as before it be felony he muſt be convicted of ſuch hunting upon not guilty pleaded firſt, and after ſuch conviction, then he muſt be indicted again upon the whole matter, that he feloniouſly did conceal it, againſt the form of the ſtatute: And if the offender upon the firſt indictment confeſſeth the indictment, then it is ſuch a judicial confeſſion as this act intendeth, and no felony within this ſtatute.

This he ſays, he heard the attorney report, and did then obſerve it; which concurring with his own opinion, he thought good to publiſh, and the rather becauſe in *Lambard*'s juſtice, amongſt his precedents of indictments, there is an erroneous precedent (he ſays) of an indictment of felony for the concealment upon the examination before a juſtice of the peace. And upon the whole he thinks it the cleareſt way to make it treſpaſs, and not felony; which the party may do at his pleaſure. 3 *Inſt. c.* 21.

But Lord *Hale* ſays, that this ſeems a difficult expoſition; for upon his arraignment for the hunting, he only anſwers to that indictment, and is not examined touching others; and beſides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convict of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how ſhall there be evidence to convict him of the concealment? 1 *H. H.* 659.

But the ſtatute of 9 *G. c.* 22. hereafter following, commonly called the Black act, puts this matter out of queſtion, whilſt it continues in force, and renders this ſtatute of little uſe: but nevertheleſs it was proper to inſert it here, becauſe if that ſtatute ſhall be ſuffered to expire, the offence will fall back again upon this ſtatute.

Penalty of keeping nets for deer.

4. The next ſtatute is in the 19th year of the ſame king, by which it is enacted, That no perſon, not having any park, chaſe or foreſt of his own, ſhall keep or cauſe to be kept any net, called deer-hays or buck ſtalls, on pain of 10*l.* a month; to him who ſhall ſue by action of debt: Or, the juſtices in ſeſſions may call before them any perſons ſuſpected, and examine them; and if they be found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of ſuch forfeiture for their labour. 19 *H.* 7. *c.* 11.

Penalty of ſtalking to deer.

5. And by the ſame ſtatute, no perſon ſhall ſtalk, nor cauſe any other to ſtalk, with any buſh, or beaſts, to any deer, except in his own ground, chaſe, foreſt, or park, without licence of the owner, maſter, or keeper; on pain of 10*l.* in like manner.

6. The

10l. or treble damages.

6. The next act is in 5 *El. c.* 21. which is re-enacted with ſome additions by the 3 *J. c.* 13. which is altered and explained by the 7 *J. c.* 13. the ſubſtance of all which put together is as follows:

If any perſon ſhall by night or by day, wrongfully or unlawfully break or enter into any park impaled, or any other ſeveral grounds incloſed with wall, pale, or hedge, and uſed and kept for the keeping, breeding, and cheriſhing of deer, and wrongfully or unlawfully ſhall hunt, drive, or chaſe out, or take, kill, or ſlay any deer therein; and be thereof convicted at the aſſizes or ſeſſions, upon indictment, bill of complaint, information, or otherwiſe, at the ſuit of the king or of the party, he ſhall for every offence pay 10*l.* to the party grieved, or treble damages and coſts at the election of the party, to be aſſeſſed by the court; and ſhall find ſufficient ſureties for his good abearing for ſeven years, or continue in priſon till he finds ſuch ſureties.

But on ſatisfaction of treble damages, the party may releaſe the ſureties within the ſeven years. Or if the perſon ſhall acknowledge his offence in open ſeſſions, and that he is ſorry therefore, and ſatisfy the party grieved, the court may diſcharge the recognizance.

But this ſhall not extend to any park or incloſed ground, hereafter to be made and uſed for deer, without the king's licence.

Guns, bows, and nets to kill deer, may be ſeized.

7. And by the ſaid ſtatute of the 3 *J. c.* 13. it is alſo enacted, that if any perſon not having lands or hereditaments of 40*l.* a year, or not worth in goods 200*l.* ſhall uſe any gun or bow to kill deer; or ſhall keep any buckſtall or engine, unleſs he have grounds incloſed for keeping of deer; any perſon having 100*l.* a year may ſeize the ſame to his own uſe.

Selling deer.

8. Another ſtatute is 1 *J. c.* 27. which enacts, that every perſon who ſhall ſell, or buy to ſell again, any deer, ſhall, on conviction at the aſſizes, or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every deer 40*s.* half to him that will ſue, and half to the poor.

20l.

9. The next act is in 13 *C.* 2. *c.* 10. by which it is enacted, that if any perſon ſhall unlawfully courſe, kill, hurt, or take away any red or fallow deer, in any foreſt, chaſe, purlieu, paddock, wood, park, or other ground where deer are or have been uſually kept, without conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; or ſhall be aiding or aſſiſting therein; and ſhall be convicted thereof by confeſſion, or oath of one witneſs, before one juſtice, in ſix months after the offence committed; he ſhall forfeit for every offence 20*l.* half to the informer, and half to the owner of the deer, by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction for ſix months to hard labour, or to the common gaol for one year; and not to be diſcharged thence, till he hath given ſureties for his good behaviour for a year next after his enlargement.

Note; This act doth not appear to be limited to grounds incloſed only; altho' the ſtatute of the 10 *G.* 2. *c.* 32. hereafter following ſeems to ſuppoſe it ſo.

10. The

10. The next act is the 3 *W.* *c.* 10. on which moſt of the convictions have been ſince that time; which (together with the alterations and additions made in and to the ſame by the 5 *G.* *c.* 15. 9 *G.* *c.* 22. and 10 *G.* 2. *c.* 32.) is as followeth: 30*l.*

If any perſon ſhall unlawfully courſe, hunt, take in toyls, kill, wound, or take away, any red or fallow deer, in any foreſt, chaſe, purlieu, paddock, wood, park, or other ground incloſed, where deer are, have, or ſhall be uſually kept, without the conſent of the owner or perſon chiefly intruſted with the cuſtody thereof; or ſhall be aiding or aſſiſting therein; and ſhall be convicted (N) *thereof, in* 12 *months after the offence, by confeſſion, or oath of one witneſs, before one juſtice where the offence ſhall be committed, or the party apprehended: every ſuch perſon ſo offending by unlawful courſing or hunting only, when no deer is taken, wounded, or killed, ſhall forfeit for every ſuch offence* 20*l.* *and in caſe any deer ſhall by ſuch perſon be wounded, taken in toyls, or killed, he ſhall forfeit for every ſuch deer* 30*l.* *to be levied by diſtreſs* (O) *upon the goods and chattels of the offender by warrant of ſuch juſtice; one third to the informer, one third to the poor, and one third to the owner of the deer: for want of ſufficient diſtreſs, ſuch perſon ſhall be impriſoned* (P) *for a year, and ſet in the pillory an hour on ſome market day in the next adjoining town to the place where the offence was committed, by the chief officer of ſuch market town, or his under officer.* ſ. 2.

Unlawfully] Where a man kills deer in purſuance of a ſuppoſed right which he has, he is not within the intent of this, nor of the other acts againſt deer ſtealing. L. *Raym.* 584.

In any foreſt, chaſe, purlieu, paddock, wood, park or other ground incloſed, where deer are, have, or ſhall be uſually kept] *M.* 13 *G.* 2. *K.* againſt *Calcutt* and *Monk.* There was a conviction for deer ſtealing in a *purlieu* of the foreſt. Whereunto exception was taken, that it was not averred, that *deer were uſually kept* in the purlieu, whereas by the ſtatute that ſeems to be required. To this it was anſwered, That ſuch averment could not extend to a purlieu, for a purlieu is a place where by law deer cannot be kept, it being diſafforeſted as well with regard to all others as the owner; and the oath of the ranger is, to drive deer out of the purlieu into the foreſt: Secondly, that the averment as to foreſts, chaſes, and purlieus, is not made neceſſary by the act, for the words *where deer are uſually kept* extend only to ground incloſed; elſe the words *other ground* will make it neceſſary to aver, that the foreſt was incloſed, which is not the caſe in any part of *England.* And by the court, The anſwer is right in both reſpects. Another objection was, that it did not appear, but that the defendant was owner of the purlieu; in which caſe he had a right to chaſe the deer off his ground. But by the court, That would be matter of defence, and ſhould be ſhewn on his part, according to the reſolution (before mentioned) in the caſe of *K.* and *Bryan.* So the convictions were confirmed. *Str.* 1119.

Or other ground incloſed, where deer are, have, or ſhall be uſually kept] *T.* 1 *An.* 2. and *Moore.* A conviction for killing deer was quaſhed,

quaſhed, becauſe it ſaid only that he killed deer *in a certain place where deer had been uſually kept*, and did not ſay *incloſed*. L. *Raym.* 791.

Aiding or aſſiſting therein] On a conviction, the queſtion was, whether he who lent dogs to another to hunt, was aiding and aſſiſting therein, to wit, in the hunting: And by the opinion of three judges he was; but *Holt* Ch. J. was of a contrary opinion, for this being a penal law, ſhall be conſtrued ſtrictly; and if ſo, then he who lent the dogs could not be aſſiſting in the act of hunting, and ſo not within the words of the ſtatute, *aiding and aſſiſting therein*, tho' he might be aſſiſting thereunto. 2 *Salk.* 542, 543.

And ſhall be convicted thereof] There ought to be a ſummons in this, and in all other like caſes, to warrant a conviction; and that ought to give a reaſonable time to appear in: but if the defendant hath appeared, it cures the want of a ſummons. 1 *Salk.* 181, 383.

H. 3 *G. K.* and *Simpſon*. The defendant was convicted for deer ſtealing; and the conviction ſet forth, that he had been ſummoned to appear before the juſtices; but it did not appear he ever was before them. Exception was taken to this, that as no appeal lies in this caſe, the juſtices ſhould not have proceeded in the abſence of the party, eſpecially where it may end in a corporal puniſhment, as it may do here, for want of a diſtreſs. And at another day, on conſideration, *Parker* Ch. J. delivered the reſolution of the court: We are all of opinion, the offender may be convicted, without appearing. The ſtatute is ſilent as to the method of proceeding, and the law of *England*, it is true, in point of natural juſtice, always requires the party charged with any offence to be heard before he be condemned in judgment; but that rule muſt have this exception, unleſs it is through his own default: were it otherwiſe, every criminal might avoid conviction. The law being ſo, the magiſtrate is bound to give ſome opportunity to the party to appear; and if upon ſuch notice, he neither comes, nor ſends a ſufficient excuſe, the magiſtrate may proceed to judgment. If this was not to be allowed, the conſequence would be, that the offender would eſcape unpuniſhed, becauſe he would never appear purpoſely to be convicted; and that would be to make the execution of the law depend on the will of the offender.

There was another order of conviction, whereby it appeared, that the defendant made an attorney to defend for him: And by the court; We think that is certainly good; for the offender may intruſt his defence with another, and the juſtices cannot enforce him to appear in perſon. And the orders were confirmed. *Str.* 44.

In 12 *months after the offence*] A conviction being returned on a *certiorari*, the objection was, that the conviction appeared to be a year after the day of the information; but it was held ſufficient that the information be proſecuted within a year after the fact; for that is a good commencement of the ſuit, and it is from that the computation is made in all ſuch caſes. 1 *Salk.* 383.

But

But by the black act hereafter mentioned, and during the continuance thereof, this profecution may be commenced at any time within three years after the offence. 9 *G. c.* 22. *f.* 13.

Oath of one witneſs] This muſt not be upon the ſingle oath of the informer; and a conviction was quaſhed for that reaſon; divers convictions, as it is ſaid, having been quaſhed for the ſame reaſon before. L. *Raym.* 1545. *Str.* 316.

Every ſuch perſon ſo offending] Where ſeveral perſons are convicted, they ſhall forfeit each 30 *l.* and not one ſum of 30 *l.* for all. 1 *Salk.* 182.

To be levied by diſtreſs] *Sale* of the goods is not mentioned here in the ſtatute; yet nevertheleſs where the law gives a diſtreſs for a publick benefit, the officer may ſell. 1 *Salk.* 379.

By warrant of ſuch juſtice] Altho' the *conſtable* is not appointed to execute this warrant, nor is ſo much as named in the clauſe; yet he is bound to obey the warrant, and is indictable if he does not: But he need not return the warrant it ſelf, for that is not required, and it may be neceſſary to keep it for his own juſtification; but he muſt either return that, or certify what he has done upon it. 1 *Salk.* 381.

One third to the informer, &c.] The penalty need not be diſtributed by the conviction; *viz.* 10 *l.* to the informer, 10 *l.* to the poor, and 10 *l.* to the party grieved; for the judgment in ſuch caſes ſeldom mentions a diſtribution: it is enough to ſay, that he is convicted, and hath forfeited 30 *l.* according to the ſtatute. 1 *Salk.* 383.

For want of ſufficient diſtreſs] If the juſtice finds there is nothing to diſtrain, then he muſt make a record thereof, and make an adjudication for corporal puniſhment; but the offender is not to pay part, and ſuffer corporally for the reſidue. L. *Raym.* 546, 1195, 6.

H. 6 *G. K.* and *Whitlock.* The defendant was committed for want of diſtreſs; and the warrant ſet forth, that it had been certified to the juſtice by the conſtable, that there was not ſufficient diſtreſs. It was objected, that there ought to have been a warrant to levy, and a return to that, that there was no diſtreſs; it may be, the conſtable only told him ſo. But by the court, The warrant is well enough; for the word *certified* imports it to be in a legal manner. *Str.* 263.

And then the act goes on thus:

Any owner of deer in any incloſed ground, or any perſon acting under him, may reſiſt ſuch offenders in the ſame manner as if the fact had been committed in an ancient chaſe or park. 3 *W. c.* 10. *f.* 5.

And as to the caſe of veniſon being found in a man's poſſeſſion, it is further enacted, that the conſtable, by a juſtice's warrant, ſhall enter into and ſearch (Q.) in ſuch manner and with ſuch power as in caſe where goods are ſtolen or ſuſpected to be ſtolen, the houſes, outhouſes, or other places belonging to ſuch houſes of ſuſpected perſons; and if any veniſon or ſkin of any deer, or

toyls, ſhall there be found, he ſhall apprehend the offender, and carry him before a juſtice; and if ſuch perſon do not give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time to be ſet by the ſaid juſtice, produce the party of whom he bought the ſame, or ſome other credible witneſs to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and thereupon ſhall be ſubject to the forfeitures and penalties hereby inflicted for the killing of one deer. 3 *W.* *c.* 10. *ſ.* 3.

And by the 9 G. *c.* 22. commonly called the Black act, any juſtice may iſſue his warrant for this purpoſe; and if any veniſon or ſkin of any deer, ſhall be found in the cuſtody of any perſon, and it ſhall appear that ſuch perſon bought ſuch veniſon or ſkin of any one who might be juſtly ſuſpected to have unlawfully come by the ſame, and doth not produce the party of whom he bought it, or prove upon oath the name and place of abode of ſuch party, then the perſon who bought the ſame ſhall be convicted of ſuch offence by any juſtice of the peace, and ſhall be ſubject to the penalty above inflicted for killing one deer. 9 G. *c.* 22. *ſ.* 11, 17.

After conviction, the conſtable or proſecutor may detain in cuſtody the offender, if he ſhall not preſently pay the money due on conviction, during ſuch reaſonable time as a return may be conveniently made to the warrant of diſtreſs, ſo as ſuch detainer exceed not two days. 3 *W.* *c.* 10. *ſ.* 4.

And moreover, the perſon convicted, before he ſhall be diſcharged out of cuſtody, ſhall become bound to the perſon againſt whom the offence ſhall be committed, in 50 *l.* for his future good behaviour, and that he ſhall not offend in like manner; and upon refuſal ſhall be committed to gaol until the bond be given: And if he ſhall be afterwards convicted of any offence in the ſaid ſtatute of 3 *W.* *c.* 10. the bond ſhall be forfeited, and the penalty be recovered with coſts in any court at *Weſtminſter*, over and above the forfeitures, and to be diſtributed as the forfeitures. 5 G. *c.* 15. *ſ.* 4.

All this being done, the juſtice ſhall certify a true copy of the conviction under his hand and ſeal, to the next quarter ſeſſions, there to be kept amongſt the records. 10 G. 2. *c.* 32. *ſ.* 8.

And no *certiorari* ſhall be allowed to remove any conviction, or other proceeding thereupon, unleſs the party, before the allowance thereof, be bound to the proſecutor in 50 *l.* with ſuch ſureties as the juſtice ſhall think fit, to pay in a month after the conviction confirmed, or a *procedendo* granted, full coſts and damages; and at the ſame time become alſo bound to the juſtice with ſufficient ſureties, in the penalty of 60 *l.* with condition to proſecute the *certiorari* with effect, and to pay to the juſtice the forfeitures due by the conviction, or to render to the juſtice the perſon convicted within a month after the conviction ſhall be confirmed or a *procedendo* granted: and in default thereof, the juſtice may proceed to the execution of the conviction. 3 *W.* *c.* 10. *ſ.* 6. 5 G. *c.* 15. *ſ.* 1.

Or,

Or, after delivering to the juſtice the rule by which the conviction ſhall be confirmed, he may proceed, as if a *procedendo* had been granted. 5 *G. c.* 15. *ſ.* 2.

H. 6 *G. K.* and *Whitlock.* The defendant being brought up from *Newgate* by *habeas corpus*, it appeared upon the return, that he was committed for deer ſtealing, as the ſtatute of the 3 *W. c.* 10. directeth, not having ſufficient diſtreſs; and that this was done by one juſtice under the ſtatute of the 5 *G.* And exception was taken to the warrant, that it doth not appear, the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the juſtice, and therefore the juſtice could not proceed to execution: for the ſtatute gives to the juſtice a juriſdiction after confirmation, which he had not before; and therefore he ought to ſhew every thing requiſite to found his juriſdiction upon. But by the court, We take notice of our own records, and by them it appears that the conviction is confirmed: and the ſtatute doth not give the juſtice a new juriſdiction, but only revives his old one, which was ſuſpended by the *certiorari*. And the defendant was remanded. *Str.* 263.

Moreover, by the ſaid act of 5 *G. c.* 15. it is enacted, that if any keeper or other officer of any park, or place where deer are uſually kept, ſhall be convicted on the ſaid ſtatute of the 3 *W.* for killing or taking away any red or fallow deer, or being aiding therein, without conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; he ſhall forfeit 50 *l.* for each deer, to be diſtributed as the other forfeitures; to be levied by diſtreſs: for want of diſtreſs, to be impriſoned for three years, and be ſet in the pillory two hours on ſome market day in the next town to the place where the offence was committed, by the chief officer of ſuch market town, or his under officer. *ſ.* 5.

And it is further enacted, that if any perſon ſhall at any time pull down or deſtroy, or cauſe to be pulled down or deſtroyed, the pale or walls of any park, foreſt, chaſe, purlieu, paddock, wood, or other ground incloſed, where any red or fallow deer ſhall be then kept, without the conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; and ſhall be convicted thereof before one juſtice, by confeſſion, or oath of one witneſs, he ſhall ſuffer the ſaid forfeitures of the 3 *W.* for killing one deer. 5 *G. c.* 15. *ſ.* 6.

And any perſon ſued for any thing done either on the 3 *W. c.* 10. or on this act, may plead the general iſſue; and if he recovers, ſhall have treble coſts. 5 *G. c.* 15. *ſ.* 3.

Tranſportation for offences in places incloſed.

11. Next follows the ſtatute of the 5 *G. c.* 28. by which it is enacted, that if any perſon ſhall enter into any park, paddock, or other incloſed ground where deer are uſually kept, and wilfully wound or kill any red or fallow deer there, without conſent of the owner of the ground, or of the perſon intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein; and ſhall be convicted thereof before the judge of aſſize, upon indictment, by verdict or confeſſion,—he ſhall be tranſported for ſeven years:

But not to be proſecuted likewiſe on any of the former acts, all which nevertheleſs ſhall be of force.

Felony without benefit of clergy.

12. Thus ſtood the laws, till the great inſolencies of the *Waltham Blacks* made a further proviſion neceſſary, by that famous act of the 9 *G. c.* 22. from them uſually called the *Black act*, which hath created more new felonies than any other ſtatute whatſoever: which ſaid act being temporary only, hath been continued from time to time, and by the laſt continuance 24 *G.* 2. *c.* 57. is to be in force to *Sep.* 1. 1757, *&c.* which, with regard to the ſubject before us, doth enact as follows:

If any perſon or perſons, being armed with ſwords, fire arms, or other offenſive weapons, and having his or their faces blacked, or being otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park, paddock, or grounds incloſed with any wall, pale, or other fence, wherein any deer have been or ſhall be uſually kept, or ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer; or if any perſon or perſons (whether armed and diſguiſed or not) ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of the king's foreſts or chaſes, which are or ſhall be incloſed with pales, rails, or other fences; or in any park, paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon, for any the ſaid offences; or ſhall by gift or promiſe of money, or other reward, procure any to join him or them in any ſuch unlawful act: every perſon ſo offending, being thereof lawfully convicted (in any county in *England*) ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to juſtice, and other particulars relating thereunto, it is proper to refer from hence to the title *Black act*; where theſe offences, together with the other offences in the ſaid act, are treated of more at large.

Tranſportation for a ſecond offence in places unincloſed.

13. It is to be obſerved, that this act of the 9 *G. c.* 22. extends only to killing and wounding deer in places *incloſed* (except the offender be withal armed and diſguiſed); and therefore the ſaid offence in places *unincloſed* remains as it was before the making the ſaid act: But by the ſtatute of 10 *G.* 2. *c.* 32. a ſecond offence againſt the former acts is made tranſportation: Which, after having recited, that whereas the aboveſaid act of the 9 *G. c.* 22. extends not to hunting or taking deer in open foreſts or chaſes, but only in ſuch as are incloſed, and offences in unincloſed places are only puniſhable by the 3 *W. c.* 10. which inflicts only a pecuniary puniſhment, which is not ſufficient to deter offenders,— doth therefore enact, That if any perſon who ſhall be convicted of unlawfully courſing, hunting, taking in toils, killing, wounding, or taking any red or fallow deer, in any open or unincloſed foreſt or chaſe, where deer are uſually kept, ſhall (during the continuance of the ſaid act of 9 *G.*) be guilty of a ſecond offence of the like nature, and ſhall be thereof lawfully convicted on indictment or information; he ſhall be tranſported for ſeven years; and if he returns within the time, he ſhall be guilty of felony without benefit of clergy. And the clerk of the peace ſhall at the requeſt of

of the profecutor, or of any perſon on his majeſty's behalf, certify to the aſſizes a tranſcript under his hand and ſeal, briefly and in few words containing the effect and tenor of the firſt conviction (kept amongſt the records); which certificate ſhall be ſufficient proof of the firſt conviction. 10 *G.* 2. *c.* 32. *ſ.* 7, 8.

14. Moreover, by the ſaid act of the 10 *G.* 2. *c.* 32. If any perſon armed ſhall (during the continuance of the ſaid act of 9 *G.*) come into any foreſt, chaſe, or park, wherein deer are uſually kept (whether incloſed or not) with an intent to courſe, hunt, take in toyls, kill, wound, or tade away any red or fallow deer, and ſhall there unlawfully beat or wound any keeper or page of any ſuch foreſt, chaſe or park, their ſervants or aſſiſtants in the execution of their office, and be thereof lawfully convicted; he ſhall be tranſported for ſeven years. 10 *G.* 2. *c.* 32. *ſ.* 9. Beating the keeper, tranſportation.

15. Whereas the burning and deſtroying of goſs, furze, and fern in foreſts and chaſes, doth deſtroy the cover neceſſary for the preſervation of the deer and game there; therefore if any perſon not having a right or legal licence to do the ſame, ſhall ſet fire to, burn, or deſtroy (or be aiding therein) any goſs, furze, or fern in any foreſt or chaſe, without conſent of the owner or perſon chiefly intruſted with the cuſtody of ſuch foreſt or chaſe, or of ſome part thereof, and being brought before a juſtice ſhall be thereof convicted by confeſſion, or oath of one witneſs, or on view of the juſtice, he ſhall forfeit not exceeding 5 *l.* nor leſs than 40 *s.* half to the informer, and half to the poor; if not forthwith paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be found, the juſtice ſhall commit him to the common gaol, for any time not exceeding three months, nor leſs than one month. 28 *G.* 2. *c.* 19. *ſ.* 3. Deſtroying covert for deer.

II. Of hares.

It is to be remembred, that I have already, under the third part of this title, treated of thoſe particulars, which are common to this with other ſpecies of the game, as to deſtroying the ſame by unqualified perſons; I here take notice of ſuch things as belong to hares only, and which for the moſt part ſeem generally to concern all perſons, whether qualified or not.

1. No perſon of what eſtate, degree, or condition he be, ſhall trace, deſtroy, and kill any hare in the ſnow, with any dog, bitch, bow, nor otherwiſe. And the ſeſſions or leet may enquire hereof; and after inquiſition found, they ſhall for every hare ſo killed, ceſs upon every offender 6 *s.* 8 *d.* to be forfeited to the king, if in the ſeſſions; and to the lord of the leet, if in the leet. 14 & 15 *H.* 8. *c.* 10. Tracing in the ſnow.

And by the 1 *J.* *c.* 27. Every perſon who ſhall trace or courſe any hares in the ſnow; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs he pay to the churchwardens for the uſe of the poor, 20 *s.* for every hare; or after one month after his commitment become bound by recognizance with two ſureties in

20*l.* a piece, before two juſtices, not to offend again in like manner. *ſ.* 2.

Snares and harepipes.

2. And by the ſaid laſt mentioned act, every perſon who ſhall at any time take or deſtroy any hares, with harepipes, cords, or any ſuch inſtruments or other engines; ſhall forfeit for every hare 20*s.* in like manner. 1 *J. c.* 27. *ſ.* 2.

And by the 22 & 23 *C.* 2. *c.* 25. *ſ.* 6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares, harepipes, or other like engines, and ſhall be thereof convicted, by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; he ſhall give to the party injured ſuch damages, and in ſuch time, as the juſtice ſhall appoint, and ſhall pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10*s.* as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month.

Killing hares in the night.

3. If any perſon whatſoever ſhall take or kill any hare in the night time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5*l.* half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. 9 *An. c.* 25. *ſ.* 3.

Shooting hares.

4. Every perſon who ſhall ſhoot at, kill, or deſtroy any hare, with any gun or bow, ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor 20*s.* for every hare; or after one month after his commitment become bound by recognizance with two ſureties before two juſtices, in 20*l.* a piece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Buying and ſelling hares.

5. Every perſon, who ſhall ſell, or buy to ſell again, any hare, ſhall, on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every hare 10*s.* half to the poor, and half to him that will ſue. 1 *J. c.* 27. *ſ.* 4.

Hunting in corn.

6. If any manner of perſon ſhall hunt with ſpaniels in any ground where corn or other grain ſhall then grow (except in his own ground), at ſuch time as any eared corn or grain ſhall be growing thereon, and before it be ſhocked or cocked, and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40*s.* to the owner of the corn; and if not paid in ten days, he ſhall be impriſoned for one month. And any juſtice may examine the offender, and bind him over to appear at the next ſeſſions, to anſwer the offence, and to pay the penalty, or receive the puniſhment. 23 *El. c.* 10. *ſ.* 5.

Taking hares in warrens.

7. By the Black act before mentioned, if any perſon, armed and diſguiſed, ſhall appear in any warren or place where hares are uſually kept; or if any perſon (whether armed and diſguiſed or not) ſhall rob any ſuch warren, or reſcue any perſon in cuſtody for either of the ſaid offences, or procure any to join with him in any ſuch unlawful act; he ſhall be guilty of felony without benefit of clergy.

III. Of

III. Of conies.

1. If any warrener ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do flee, or defend themſelves; altho' the warrener, or his aſſiſtant, do kill ſuch offenders, they ſhall not be troubled upon the ſame. 21 *Ed.* 1. *ſt.* 2. Treſpaſſers in warrens may be reſiſted.

2. When information ſhall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon ſuſpected, he may make a warrant to bring ſuch perſon before himſelf or any other of the ſaid counſel or juſtices; and if ſuch perſon ſhall conceal the ſaid hunting, or any of his accomplices, it ſhall be felony; but if he confeſſeth, it ſhall be but treſpaſs finable at the ſeſſions. 1 *H.* 7. *c.* 7. Hunting in a warren by night or diſguiſed.

3. If any perſon ſhall in the night time enter into any grounds incloſed, and uſed for keeping of conies, and hunt, drive out, take, or kill any conies; he ſhall, on conviction at the ſuit of king or of the party, at the aſſizes or ſeſſions, on indictment, bill, information, or otherwiſe, forfeit 10 *l.* to the party grieved, or treble damages and coſts at the election of the party; and find ſureties for his good abearing for ſeven years, or continue in priſon till he does. 3 *J.* *c.* 13. *ſ.* 2. Hunting in a warren by night.

But this ſhall not extend to any grounds to be incloſed and uſed for conies after the making of this act, without the king's licence. *ſ.* 7.

4. No perſon ſhall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully uſed for the breeding or keeping of conies (except the owner or poſſeſſor of the ground, or perſons employed by them); on pain that the offender, on conviction in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs, ſhall give to the party injured ſuch damages and in ſuch time as ſhall be appointed by the juſtice, and over and above pay down preſently to the overſeers for the uſe of the poor ſuch ſum not exceeding 10 *s.* as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction for ſuch time as he ſhall think fit, not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 5. Killing in the night, on the borders of warrens.

The ſtatute ſaith, *upon the borders of warrens*; but if they are out of the warren, no perſon hath any property in them, and a man may juſtify killing them if they eat up his corn; but no action lies againſt the owner of the warren. 5 *Co.* 104. *Read. Game.*

So a perſon that hath right of common may kill them, when they are out of the warren and deſtroy the common; but he cannot have an action on the caſe againſt the lord, for that would be to create a multiplicity of actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

5. If any perſon ſhall at any time, enter wrongfully into any warren or ground lawfully uſed or kept for the breeding or keeping Killing in places incloſed or uninclоſed, by night or day.

ing of conies, whether it be incloſed or not; and there ſhall chaſe, take, or kill any conies; and ſhall be thereof convicted in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs; he ſhall yield to the party grieved treble damages and coſts, and be impriſoned three months, and after till he find ſureties for his good abearing. 22 & 23 C. 2. c. 25. ſ. 4.

Setting ſnares. 6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares or other like engines, and ſhall be thereof in like manner convicted, he ſhall give to the party grieved ſuch damages, and in ſuch time as the juſtice ſhall appoint, and pay down preſently to the overſeer for the uſe of the poor ſuch ſum not exceeding 10ſ. as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month. 22 & 23 C. 2. c. 25. ſ. 6.

Keeping engines. 7. If any perſon not having lands or hereditaments of 40l. a year, or not worth in goods 200l. ſhall uſe any gun or bow to kill conies, or ſhall keep any ferrets or coney dogs (except he have grounds incloſed for keeping of conies, the increaſing of which ſhall amount to 40ſ. a year to be let, and except warreners in their warrens); in ſuch caſe, any perſon having 100l. a year may ſeize the ſame to his own uſe. 3 J. c. 13. ſ. 5.

Felony. 8. By the Black act before mentioned, if any perſon, being armed and diſguiſed, ſhall appear in any warren or place where conies are uſually kept; or (whether armed and diſguiſed or not) ſhall rob any ſuch warren, or reſcue any perſon in cuſtody for ſuch offence, or procure any perſon to join him therein; he ſhall be guilty of felony without benefit of clergy.

V. Laws concerning the winged game in particular.

I. Of hawks and hawking.
II. Of ſwans.
III. Of partridges and pheaſants.
IV. Of pigeons.
V. Of wild ducks, wild geeſe, and other water fowl.
VI. Of grouſe or moor game.
VII. Of herons.
VIII. Of other fowl.

I. Of hawks and hawking.

What hawks a man ſhall bear. 1. No man ſhall bear any hawk of the breed of *England*, called a nyeſſe, goſhawk, taſſel, laner, laneret, or faulcon; on pain of forfeiting his hawk to the king. And if he bring any of them over ſea, or out of *Scotland*, he ſhall bring a certificate thereof from the officer of the port, or warden of the march;

on the like pain of forfeiting the ſame to the king. And the perſon that bringeth any ſuch hawk to the king, ſhall have a reaſonable reward of the king, or elſe the hawk for his labour. 11 *H.* 7. *c.* 17.

2. Every perſon who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is loſt, ſhall preſently bring the ſame to the ſheriff; and the ſheriff ſhall make proclamation in all the good towns in the county, that he hath ſuch an hawk in his cuſtody; and if he is challenged in four months, the owner ſhall have him again, paying the coſts: if he is not challenged in four months, the ſheriff ſhall have him, making gree to him that took him, if he be a ſimple man; but if he be a gentleman, and of eſtate to have the hawk, then the ſheriff ſhall redeliver to him the hawk, taking of him reaſonable coſts for the time that he had him in his cuſtody. 34 *Ed.* 3. *c.* 22. Perſon finding a hawk.

3. And if any man ſteal any hawk, and the ſame carry away, not doing the ordinance aforeſaid; it ſhall be done of him as of a thief, that ſtealeth a horſe or other thing. 37 *Ed.* 3. *c.* 19. That is, he ſhall be guilty of felony, but ſhall have his clergy. 3 *Inſt.* 98. Stealing a hawk.

4. If any perſon ſhall take away any hawks or other eggs, by any means unlawfully, out of the woods or ground of any perſon; and be thereof convicted at the aſſizes or ſeſſions, on indictment, bill, or information, at the ſuit of the king or of the party; he ſhall be impriſoned three months, and ſhall pay treble damages; and after the three months expired, ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El.* *c.* 21. *ſ.* 3. Taking hawks or eggs out of the woods.

5. But by a more ancient ſtatute, no man ſhall take any ayre, faulcon, goſhawk, taſſel, laner, or laneret, in their warren, wood, or other place; nor purpoſely drive them out of their coverts accuſtomed to breed in, to cauſe them to go to other coverts to breed; nor ſlay them for any hurt done by them: on pain of 10*l.* half to him that will ſue before the juſtices of the peace, and half to the king. 11 *H.* 7. *c.* 17. The ſame.

And no manner of perſon, of what condition or degree he be, ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any faulcon, goſhawk, or laner, out of the neſt; on pain (being convicted thereof before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken *id.*

6. If any manner of perſon ſhall hawk in another man's corn after it is eared, and before it is ſhocked; and be convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40*s.* to the owner: And if not paid in ten days, he ſhall be impriſoned for a month. 23 *El.* *c.* 10. Hawking in corn.

II. Of ſwans.

Qualification to keep ſwans.

1. No perſon (other than the king's ſon) unleſs he have lands of freehold to the value of five marks a year, ſhall have any mark or game of ſwans; on pain of forfeiting the ſwans, half to the king, and half to any perſon (ſo qualified) who ſhall ſeize the ſame. 22 *Ed.* 4. *c.* 6.

Stealing ſwans marked.

2. It is felony to take any ſwans that be lawfully marked, tho' they be at large. *Dalt. c.* 156.

Swans unmarked.

3. And as to ſwans unmarked; if they be domeſtical or tame, that is, kept in a moat, or in a pond near to a dwelling houſe, to ſteal ſuch is alſo felony. *Dalt. c.* 156.

So it ſeemeth of ſwans unmarked, ſo long as they keep within a man's manor, or within his private rivers; or if they happen to eſcape from thence, and be purſued and taken, and brought in again. *id.*

But if ſwans that are unmarked ſhall be abroad, and ſhall attain to their natural liberty, then the property of them is loſt; and ſo long, felony cannot be committed by taking them. *id*

And yet ſuch unmarked and wild ſwans the king's officers may ſeize (being abroad) for the king's uſe, by his prerogative. Alſo, the king may grant them, and by conſequence another may preſcribe to have them, within a certain precinct or place. *id.*

Swans eggs.

4. Every perſon who ſhall take the eggs of any ſwans out of the neſt, or wilfully ſpoil them in the neſt; and ſhall be convicted thereof before two juſtices, by confeſſion, or oath of two witneſſes; ſhall be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor, 20*s.* for every egg; or after one month of his commitment, become bound by recognizance with two ſureties in 20*l.* a-piece, before two juſtices, never to offend again in like manner: which recognizance ſhall be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

But by a more antient ſtatute, no perſon ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any ſwan; on pain (on conviction before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the ſwans. 11 *H.* 7. *c.* 17.

III. Of partridges and pheaſants.

Partridges and pheaſants are birds of warren, and the law ſeems peculiarly to protect them; as appears by what follows:

Taking them in another man's ground.

1. By the 11 *H.* 7. *c.* 17. it is enacted, that no perſon, of what condition he be, ſhall take or cauſe to be taken, any pheaſants or partridges by nets, ſnares, or other engines, out of his own warren, upon the freehold of any other perſon, without the ſpecial licence of the owner or poſſeſſioner of the ſame; on pain of 10*l.* half to him that ſhall ſue, and half to the owner or poſſeſſioner of the ground where they ſhall be taken.

2. Every

2. Every perſon who ſhall ſhoot at, kill, or deſtroy, any pheaſant or partridge, with any gun or bow; or ſhall take, kill, or deſtroy them with ſetting dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; or ſhall take their eggs out of the neſt, or ſpoil them in the neſt; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay upon conviction to the churchwardens for the uſe of the poor, 20*s.* for every pheaſant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two ſureties, before two juſtices, in 20*l.* each, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2. Taking them with dogs, nets, or engines; or their eggs.

And by the 7 *J.* *c.* 11. Every perſon, who ſhall take, kill, or deſtroy, any pheaſant or partridge, with ſetting dogs and nets, or otherwiſe with any manner of nets, ſnares, or engines; ſhall, on conviction before two juſtices, by confeſſion or oath of one witneſs, be committed to gaol for three months, unleſs he forthwith pay to the churchwardens or overſeers 20*s.* for every pheaſant or partridge; and further to become bound by recognizance of 20*l.* before one juſtice, that he ſhall not thereafter kill or deſtroy any pheaſant or partridge. The recognizance to be filed at the next ſeſſions.

3. Every perſon who ſhall ſell, or buy to ſell again, any partridge or pheaſant (except they be reared and brought up in houſes, or brought from beyond ſea); ſhall, on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every partridge 10*s.* and for every pheaſant 20*s.* half to him that will ſue, and half to the poor. 1 *J.* *c.* 27. *ſ.* 4. Selling or buying.

4. If any perſon, of what eſtate, degree, or condition ſoever, ſhall take, kill, or deſtroy any pheaſants or partridges in the night time; and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit for every pheaſant 20*s.* and for every partridge 10*s.* half to him that ſhall ſue, and half to the lord of the manor, unleſs ſuch lord ſhall licence or procure the ſaid taking or killing, in which caſe the ſaid half ſhall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he ſhall be impriſoned for one month: And moreover, beſides ſuch forfeiture and impriſonment, he ſhall give bond to ſome juſtice of the peace, with good ſureties, not to offend again in like manner for the ſpace of two years. 23 *El.* *c.* 10. Taking in the night.

And by the 9 *An.* *c.* 25. If any perſon whatſoever ſhall take or kill any pheaſant or partridge in the night time; he ſhall, on conviction before one juſtice, on oath of one witneſs, forfeit 5*l.* half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months.

5. Every free warrener, lord of a manor, or freeholder ſeiſed in his own, or his wife's right, of 40*l.* a year eſtate of inheritance, or lives eſtate of 80*l.* or worth in goods 400*l.* may take pheaſants and partridges (in the day time only) in his own free warren, Who may take in the day time.

warren, manor, or freehold, betwixt *Michaelmas* and *Chriſtmas* yearly. 7 *J.* *c.* 11. *ſ.* 7.

At what time hawking at them ſhall be prohibited.

6. Every perſon whatſoever, who ſhall hawk at, deſtroy, or kill, any pheaſant or partridge, with any kind of hawk, or dog, by colour of hawking, between the firſt of *July*, and the laſt of *Auguſt*; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, in ſix months after the offence, be committed to gaol for one month, unleſs he pay upon conviction to the churchwardens or overſeers for the uſe of the poor, 40 *s.* for every ſuch hawking at any pheaſant or partridge, and 20 *s.* for every ſuch pheaſant or partridge which he, his hawk, or dog, ſhall take or kill. 7 *J.* *c.* 11. *ſ.* 2.

It is here obſervable upon the whole, that the killing of partridges and pheaſants is prohibited in almoſt all manner of ways, except hawking only; and that hawking at them is only prohibited in two ſummer months, when the corn is growing, and the brood is very young: from whence it may be conjectured, that the extraordinary reſtrictions under this ſection have been intended in favour of the diverſion of hawking, and to preſerve theſe two ſpecies of game for that purpoſe. Which obſervation (if juſt) will help to explain ſome other reſtrictive clauſes, in this part of the title, concerning the *winged game*.

IV. Of pigeons.

Who may erect a dove coat.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Dove coat not a nuſance.

2. And it hath been adjudged, that erecting of a dove houſe is not a common nuſance, nor preſentable in the leet. *Cro. Ja.* 490, 1.

Killing with dogs, nets, or engines.

3. Every perſon who ſhall ſhoot at, kill, or deſtroy any houſe-dove or pigeon with any gun or bow; or ſhall take, kill, or deſtroy the ſame with ſetting dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor, 20 *s.* or after one month after his commitment, become bound by recognizance with two ſureties, before two juſtices, in 20 *l.* apiece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2.

Pigeons treſpaſſing.

4. But if the pigeons come upon my land, and I kill them; the owner hath no remedy againſt me; tho' I may be liable to the ſtatutes which make it penal to deſtroy them. *Cro. Ja.* 492.

Pigeons to go to the heir.

5. Doves in a dove-houſe, young and old, ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

V. Of

V. Of wild ducks, wild geese, and other water fowl.

1. Every person who shall shoot at, kill, or destroy with any gun or bow, any mallard, duck, teal, or widgeon; and the same be proved by confession or oath of two witnesses, before two justices; —shall be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20 *s.* or after one month after commitment become bound by recognizance with two sureties, before two justices, in 20 *l.* each, not to offend again in like manner: Which recognizance shall be returned to the next sessions. 1 *J.* *c.* 27. *s.* 2. Shooting water fowl.

2. No person, between the last day of *May*, and the last day of *August* yearly, shall take, or cause to be taken, any wild ducks, mallards, widgeons, teals, or wild geese, with nets or other engines; on pain of a year's imprisonment, and to forfeit for every fowl so taken 4 *d.* half to the king, and half to him that will sue by action of debt: Also the justices of the peace may inquire of, hear and determine the same, as in cases of trespass. 25 *H.* 8. *c.* 11. Not to be taken in the moulting season.

Nevertheless, any gentleman, or any other that may dispend 40 *s.* a year of freehold, may hunt and take such wild fowl with their spaniels only, without using a net or other engine except the long bow. *id.*

3. But by a subsequent statute, if any person whatsoever (between *June* 1. and *Oct.* 1. yearly, 10 *G.* 2. *c.* 32.) shall by hayes, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of resort for wild fowl in the moulting season; and shall be convicted thereof before one justice by the oath of one witness; he shall for every such fowl forfeit 5 *s.* half to the informer, and half to the poor, by distress; rendring the overplus above the penalty and charges of distress; for want of distress, to be committed to the house of correction, not exceeding one month, nor less than 14 days, to be whipt and kept to hard labour. And the nets to be seized and destroyed in the presence of the justice. 9 *An.* *c.* 25. *s.* 4. The same.

4. No person from *March* 31. to *June* 30. yearly, shall take or destroy the eggs of any mallard, teal, or other water fowl; on pain of a year's imprisonment, and of forfeiting for every egg one peny, half to the king, and half to him that will sue by action of debt; or, the justices of the peace may determine the same as in cases of trespass. 25 *H.* 8. *c.* 11. Destroying their eggs.

VI. Of grouse or moor game.

1. If any person whatsoever shall take or kill any moor, heath-game, or grouse, in the night time; he shall, on conviction before one justice, on oath of one witness, forfeit 5 *l.* half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction three months for the first offence, and for every other offence four months. 9 *An.* *c.* 25. *s.* 3. Killing grouse in the night.

2. Every

Shooting grouſe. 2. Every perſon who ſhall ſhoot at, kill, or deſtroy, with any gun or bow, any grouſe, heath-cock, or moor game; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs upon conviction he pay to the churchwardens for the Uſe of the poor, 20*s.* or, after one month after his commitment, become bound by recognizance with two ſureties in 20*l.* each, before two juſtices, not to offend again in like manner: the recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2.

Burning ling. 3. For the better preſerving the red and black game of grouſe commonly called heath-cocks, or heath-polts, no perſon whatſoever on any mountains, hills, heaths, moors, foreſts, chaſes, or other waſtes, ſhall preſume to burn between *Feb.* 2. and *June* 24. any grig, ling, heath, furz, goſs, or fern; on pain of being committed to the houſe of correction, for any time not exceeding one month, nor leſs than ten days, there to be whipt and kept to hard labour. 4 & 5 *W.* *c.* 23. *ſ.* 11.

As here is no method of conviction directed for this offence, the juſtices of the peace ſeem to have no cognizance thereof; but the trial and conviction muſt be at the aſſizes, or in the courts at *Weſtminſter*.

In the 5 *An.* *c.* 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* foreſt, and other places in *Nottinghamſhire*, which not being of general concern are here omitted.

VII. Of herons.

Shooting herons. 1. Every perſon who ſhall ſhoot at, kill, or deſtroy, any heam, with gun or bow, ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs on conviction he pay to the churchwardens for the uſe of the poor, 20*s.* or, after one month from his commitment, become bound by recognizance with two ſureties in 20*l.* each, before two juſtices, not to offend again in like manner: The recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2.

None ſhall take but by hawking. 2. No perſon, without his own ground, ſhall flea, take, or cauſe to be taken, by mean of craft or engine, any herons, unleſs it be with hawking; on pain of 6*s.* 8*d.* to him who ſhall ſue by action of debt; or the ſeſſions may call before them perſons ſuſpected, and examine them; and if found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of the forfeiture for their labour. 19 *H.* 7. *c.* 11.

Young herons. 3. And no perſon, without his own ground, ſhall take any young herons out of the neſt; on pain of 10*s.* in like manner for every young heron. 19 *H.* 7. *c.* 11.

Eggs. 4. And if any perſon from *March* 31 to *June* 30 ſhall take or deſtroy the eggs of any heron; he ſhall be impriſoned for a year, and forfeit for every egg, 8*d.* half to the king, and half to him that will ſue by action of debt, or before the juſtices of the peace. 25 *H.* 8. *c.* 11.

VIII. Of other fowl.

In general; No manner of perſon, from the laſt day of *March* to the laſt day of *June* yearly, ſhall by day or night, take, or deſtroy any eggs of any kind of wild fowl, from or in any neſt or place, where they ſhall chance to be laid by any kind of the ſame wild fowl; on pain of impriſonment for a year, and to forfeit for every egg of a buſtard 20 *d.* of a bittour or ſhovelard 8 *d.* and of other wild fowl (except crows, ravens, boſcards, and other fowl not uſed to be eaten) 1 *d.* half to the king, and half to him that will ſue by action of debt: Alſo the juſtices of the peace may determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.

VI. Laws for preſerving the game of fiſh in particular.

There are ſome acts relating to this ſubject, of which, being of leſs general concern, it is thought ſufficient to inſert only the titles; *viz.*

(1) An act for the preſervation of fiſhing in the river of *Severn.* 30 *C.* 2. *c.* 9.

(2) An act for the increaſe and better preſervation of ſalmon and other fiſh, in the rivers within the counties of *Southampton* and *Wilts.* 4 *An.* *c.* 21. In which ſome alterations are made by the 1 *G.* *ſt.* 2. *c.* 18.

(3) An act for the better preſervation and improvement of the fiſhery within the river of *Thames*, and for regulating and governing the company of fiſhermen of the ſaid river. 9 *An.* *c.* 26.

What follows, ſeems beſt reducible under theſe heads:

I. The penalty of fiſhing in ponds and other private fiſheries.

II. Rules about the ſize, and preſerving the breed of fiſh.

III. Rules concerning fiſhing in or near the ſea.

IV. Importing fiſh.

I. The penalty of fiſhing in ponds and other private fiſheries.

1. Any man may erect a fiſh pond without licence; becauſe it is a matter of profit, and for the increaſe of victuals. 2 *Inſt.* 199. Who may erect a fiſh pond.

2. If any treſpaſſers in ponds be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs; and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof) and then ſhall find good ſurety, that after they ſhall not commit the like treſpaſs: And if they have not whereof to make fine, Three years impriſonment and fine.

after

after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety, they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit. 3 *Ed.* 1. *c.* 20.

Note; Thoſe are treſpaſſers in ponds, who endeavour to take fiſh therein. 2 *Inſt.* 200.

Three months impriſonment and treble damages.

3. If any perſon ſhall unlawfully break, cut, or deſtroy any head or dam of a fiſh pond, or ſhall wrongfully fiſh therein, with intent to take or kill fiſh; he ſhall on conviction at the ſuit of the king, or of the party, at the aſſizes or ſeſſions, be impriſoned three months, and pay treble damages; and after the three months expired ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El. c.* 21. *ſ.* 2, 6.

Treble damages and 10 s. to the poor.

4. If any perſon ſhall uſe any net, angle, hair, nooſe, troll, or ſpear; or ſhall lay any wears, pots, fiſh hooks, or other engines; or ſhall take any fiſh by any means or device whatſoever, or be aiding thereunto, in an river, ſtew, pond, mote, or other water, without the conſent of the lord or owner of the water; and be thereof convicted by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; every ſuch offender in taking or killing fiſh, ſhall pay any ſum not exceeding treble damages, and 10 *s.* to the overſeers for the uſe of the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not exceeding one month, unleſs he enter into bond with one ſurety to the party injured, not exceeding 10 *l.* never to offend in like manner. 22 & 23 *C.* 2. *c.* 25. *ſ.* 7.

And the juſtice may take, cut, and deſtroy all ſuch angles, ſpears, hairs, nooſes, trolls, wears, pots, fiſh hooks, nets or other engines, wherewith ſuch offender ſhall be apprehended. *ſ.* 8.

Perſons aggrieved may appeal to the next ſeſſions, whoſe determination ſhall be final, if no title to any land, royalty, or fiſhery be therein concerned. *ſ.* 9.

Seizing of engines.

5. Whereas divers idle, diſorderly, and mean perſons, have and keep nets, angles, leaps, piches and other engines for the taking and killing of fiſh out of the ponds, waters, rivers, and other fiſheries, to the damage of the owners thereof, therefore no perſon hereafter ſhall have or keep any net, angle, leap, piche, or other engine for the taking of fiſh; other than the makers and ſellers thereof, and other than the owner and occupier of a river or fiſhery; and except fiſhermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fiſhery, and every other perſon by him appointed, may ſeize, detain, and keep to his own uſe, every net, angle, leap, piche, and other engine, which he ſhall find uſed or laid, or in the poſſeſſion of any perſon fiſhing in any river or fiſhery, without the conſent of the owner or occupier thereof. And alſo any perſon, authorized by a juſtice's warrant, may in the day time ſearch the houſes, outhouſes, and other places of any perſon hereby prohibited to have or keep the ſame, who ſhall be ſuſpected to have or keep in his cuſtody or poſſeſſion any net, angle, leap, piche, or other engine aforeſaid, and ſeize and keep the ſame to his own uſe, or cut or deſtroy the ſame, as things by this act prohibited

hibited to be kept by perſons of their degree. 4 & 5 *W.* *c.* 23. *ſ.* 5.

6. By the Black act before mentioned, if any perſon (during the continuance of the ſaid act) being armed and diſguiſed, ſhall unlawfully ſteal or take away any fiſh out of any river or pond; or (whether armed and diſguiſed or not) ſhall unlawfully and maliciouſly break down the head or mound of any fiſh pond, whereby the fiſh ſhall be loſt or deſtroyed, or ſhall reſcue any perſon in cuſtody for ſuch offence, or procure any other to join with him therein; he ſhall be guilty of felony without benefit of clergy. Felony.

II. Rules concerning the ſize, and preſerving the breed of fiſh.

1. If any perſon ſhall lay or draw any net, engine, or other device, or cauſe any thing to be done in the *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Merſey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent*, or *Trent*, whereby the ſpawn or fry of ſalmon, or any kepper or ſhedder ſalmon, or any ſalmon not 18 inches from the eye to the extent of the middle of the tail, ſhall be taken and killed; or ſhall ſet any bank, dam, hedge, ſtank, or net croſs the ſame, whereby the ſalmon may be taken, or hindred from paſſing up to ſpawn; or ſhall between *July* 31. and *Nov.* 12. (except in the *Ribble*, where they may be taken between *Jan.* 1. and *Sept.* 15) take any ſalmon of any kind in any of the ſaid rivers; or ſhall, after *Nov.* 12. yearly, fiſh there for ſalmon with any net leſs than 2 ½ inches in the meſh; he ſhall, on conviction, in one month, before one juſtice, on view, confeſſion, or oath of one witneſs, forfeit 5 *l.* and the fiſh, nets, and engines; half the ſaid ſum to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction or gaol, not more than three months, nor leſs than one, to be kept to hard labour, and ſuffer ſuch other corporal puniſhment as the juſtice can think fit: The nets and engines to be cut or deſtroyed, in preſence of the juſtice: The banks, dams, hedges, and ſtanks, to be demoliſhed at the charge of the offender, to be levied in like manner. 1 *G.* *ſt.* 2. *c.* 18. *ſ.* 14. Salmon.

Note; It is not ſaid, who ſhall have the fiſh; ſo that it ſeemeth that they are forfeited to the king.

And no ſalmon out of the ſaid rivers ſhall be ſent to *London*, under ſix pounds weight; on pain that the ſender, buyer, or ſeller, on the like conviction, ſhall forfeit 5 *l.* and the fiſh, half to the informer, and half to the poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. *id.* *ſ.* 15.

And perſons aggrieved may appeal to the next ſeſſions. *id.* *ſ.* 17.

2. No ſalmon ſhall be taken in the *Humber*, *Ouze*, *Trent*, *Done*, *Arre*, *Derwent*, *Wherfe*, *Nid*, *Yore*, *Swale*, *Teſe*, *Tine*, *Eden*, or any other water wherein ſalmon are taken, between *Sep.* 8. and *Nov.* 11. Nor ſhall any young ſalmon be taken at *Milpools* (nor in Salmon ſpawn, and ſmelts.

other places, 13 *R.* 2. *ſt.* 1. *c.* 19.) from *Midapril* to *Midſummer*; on pain of having the nets and engines burnt for the firſt offence; for the ſecond, impriſonment for a quarter of a year; for the third, a whole year; and as the treſpaſs increaſeth, ſo ſhall the puniſhment. And overſeers ſhall be aſſigned to inquire hereof. 13 *Ed.* 1. *ſt.* 2. *c.* 47. That is, under the great ſeal, and by authority of parliament. 2 *Inſt.* 477.

And no perſon ſhall put in the waters of *Thamiſe*, *Humber*, *Ouze*, *Trent*, nor any other waters, in any time of the year, any nets called ſtalkers, nor other nets or engines whatſoever, by which the fry or breed of ſalmons, lampreys, or any other fiſh may in any wiſe be taken or deſtroyed; on the like pain. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the waters of *Lon*, *Wyre*, *Merſee*, *Rybbyl*, and all other waters in *Lancaſhire*, ſhall be put in defence as to taking of ſalmons, from *Michaelmaſs* to *Candlemaſs*, and in no other time of the year. And conſervators ſhall be appointed in like manner. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the juſtices of the peace (and the mayor of *London* on the *Thames* and *Medway*) ſhall ſurvey the offences in both the acts abovementioned; and ſhall ſurvey and ſearch all the wears in ſuch rivers, that they ſhall not be very ſtrait for the deſtruction of ſuch fry and brood, but of reaſonable wideneſs after the old aſſize uſed or accuſtomed; and they ſhall appoint under-conſervators, who ſhall be ſworn to make like ſurvey, ſearch and puniſhment. And they ſhall inquire in ſeſſions, as well by their office, as at the information of the under-conſervators, of all defaults aforeſaid, and ſhall cauſe them which ſhall be thereof indicted, to come before them; and if they be thereof convict, they ſhall have impriſonment, and make fine at the diſcretion of the juſtices: and if the ſame be at the information of an under-conſervator, he ſhall have half the fine. 17 *R.* 2. *c.* 9.

Spawn and fiſh under ſize.

3. No perſon, of what eſtate, degree, and condition ſoever he be, ſhall take and kill any young brood, ſpawn, or fry of fiſh; nor ſhall take and kill any ſalmon or trouts, not being in ſeaſon, being kepper or ſhedder; nor any pike or pikerel not being in length 10 inches fiſh or more; nor any ſalmon not being in length 16 inches fiſh; nor any trout not being in length eight inches fiſh; nor any barbel not being in length 12 inches: and no perſon ſhall fiſh or take fiſh by any device, but only with net or tramel, whereof the meſh ſhall be two inches and an half broad (angling excepted, and except ſmelts, loches, minnies, bulheads, gudgions, and eels): on pain of forfeiting 20 *l.* for every offence, and alſo the fiſh, nets, and engines. 1 *El.* *c.* 17.

And the conſervators of rivers may inquire hereof by a jury; and in ſuch caſe they ſhall have the fines. *id.*

The leet alſo may inquire hereof; and then the forfeiture ſhall go to the lord of the leet. And if the ſteward do not charge the jury therewith, he ſhall forfeit 40 *s.* half to the king, and half to him that ſhall ſue. And if the jury conceal the offence, he may impanel another jury to inquire of ſuch concealment; and if it is found, the former jury ſhall forfeit every one 20 *s.* to the lord of the leet *id.*

And

And if the offence is not preſented in the leet, within a year, then it may be heard and determined at the ſeſſions or aſſizes. (Saving the right of the conſervators.) *id.*

4. No perſon ſhall faſten any nets over rivers, to ſtand continually day and night; on pain of an hundred ſhillings to the king. 2 *H.* 6. *c.* 15. Nets ſtanding day and night.

III. Rules concerning fiſhing in or near the ſea.

1. No perſon ſhall take, kill, or deſtroy any lobſters on the coaſt of *Scotland*, from *June* 1. to *Sept.* 1. on pain of 5 *l.* to be recovered by any perſon who ſhall inform and ſue for the ſame, on a ſummary complaint before two juſtices of the ſhire on the coaſt where the offence ſhall be committed. 9 *G.* 2. *c.* 33. *ſ.* 4. Lobſters.

2. Every perſon who ſhall ſet up any new wear along the ſea ſhore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek, ſhall, on conviction before one juſtice, or mayor, forfeit for every offence 10 *l.* half to the king, and half to him that ſhall ſue; to be levied by the conſtables or churchwardens, by diſtreſs. 3 *J.* *c.* 12. *ſ.* 2. Erecting a new wear.

3. Every perſon who ſhall willingly take, deſtroy, or ſpoil any ſpawn, fry, or brood of any ſea fiſh, in any wear or other engine or device whatſoever; ſhall forfeit for every offence 10 *l.* in like manner. 3 *J.* *c.* 12. *ſ.* 2. Spawn of ſea fiſh.

4. And every perſon who ſhall fiſh in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the ſea, with any draw-net, or drag-net under three inches meſh, *viz.* 1 ½ inch from knot to knot (except for the taking of ſmoulds in *Norfolk* only), or with any net with canvas, or other engine or device, whereby the ſpawn, fry, or brood of ſea fiſh may be deſtroyed; ſhall in like manner forfeit ſuch net, and alſo 10 *s.* for every offence, half to the poor, and half to him that ſhall ſue. 3 *J.* *c.* 12. *ſ.* 2. Size of nets at ſea.

But this act ſhall not extend to any net of leſſer meaſh, only for taking of herrings, pilchards, ſprats, or lavidnian *id.* *ſ.* 3.

And by a ſubſequent ſtatute, if any perſon ſhall uſe at ſea, on the *Engliſh* coaſt, any traul-net, drag-net, or ſet net, for catching of any fiſh (except herrings, pilchards, ſprats or lavidnian) which hath the meſh leſs than 3 ½ inches from knot to knot; or which hath a falſe or double bottom; or ſhall put one net behind another; he ſhall, on conviction (after ſummons) before one juſtice where the offender reſides or ſhall be found, on oath of two witneſſes, in one month after the offence, forfeit the ſame, and alſo 20 *l.* half to the informer, and half to the poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to gaol for 12 months; and the nets to be burnt. 1 *G.* *ſt.* 2. *c.* 18. Perſons aggrieved may appeal to the next ſeſſions. *id.*

5. By the ſame act of 1 *G.* *ſt.* 2. if any perſon ſhall bring to ſhore, or expoſe to ſale any fiſh leſs than the following ſizes from the eyes to the extent of the tail, *viz.* bret or turbet 16 inches, bril or pearl 14, codlin 12, whiting 6, baſs and mullet 12, ſole 8, place or dab 8, flounder 7 (except only ſuch as ſhall be taken with Size of ſea fiſh.

a hook, 22 G. 2. c. 49. ſ. 22.); he ſhall forfeit the fiſh to the poor; and alſo 20s. half to the informer, and half to the poor; to be levied in like manner: for default of payment, or of ſufficient diſtreſs, to be ſent to the next houſe of correction, or other common gaol of the county, to be ſeverely whipt, and kept to hard labour ſix days, and not longer than 14. Perſons aggrieved may appeal to the next ſeſſions.

IV. Importing fiſh.

May be ſeized. 1. If any ling, herring, cod, or pilchard, ſalmon, eels, or congers, taken by foreigners, ſhall be imported or expoſed to ſale; any perſon may ſeize the ſame, half for himſelf, and half for the poor. 18 C. 2. c. 2.

Penalty, 100 l. 2. And by the 1 G. ſt. 2. c. 18. and 9 G. 2. c. 33. no fiſh taken by, or received of any foreigner, except proteſtants inhabiting in *England*, ſhall be imported (except eels, ſtock fiſh, anchovies, ſturgeon, botarge, or cavear, lobſter, and turbets); on pain of 100 *l.* and the maſter of the veſſel 50 *l.* half to the poor, and half to the informer who ſhall ſue in 12 months in any of the courts at *Weſtminſter*.

For fiſhing, ſo far as the ſalt duties are concerned therein, may be conſulted that part of the title **Exciſe**, which treateth of the duties upon ſalt.

A. Appointment of a gamekeeper; on the 22 & 23 C. 2. c. 25. ſ. 2. 5 *An.* c. 14. ſ. 4. and 3 G. c. 11. ſ. 1.

I A. L. *eſquire, lord of the manor of* ——— *do hereby nominate, authorize, and appoint* A. G. *of* P. *in the county of* ——— *yeoman, to be my gamekeeper of and within my ſaid manor of* ——— *in the county aforeſaid, with full power, licence, and authority to kill any hare, pheaſant, partridge, or any other game whatſoever, in and upon my ſaid manor of* ——— *for my ſole uſe, and immediate benefit; and alſo to take and ſeize all ſuch guns, bows, greyhounds, ſetting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbells, hays or other nets, harepipes, ſnares or other engines for the taking and killing of conies, hares, pheaſants, partridges, or other game, as within the precincts of my ſaid manor of* ——— *ſhall be uſed by any perſon or perſons who by law are prohibited to keep or uſe the ſame. Given under my hand and ſeal, this* ——— *day of* ——— *in the* ——— *year*, &c.

B. Warrant to ſearch for dogs and engines; on the 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

Weſtmorland. { To———

WHEREAS *complaint hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *of* ——— *in the ſaid county, yeoman, that he the ſaid* A. I. *hath good ground to ſuſpect and doth ſuſpect that* A. O. *of* ——— *aforeſaid, in the county aforeſaid, yeoman, being a perſon in no reſpect qualified by the laws of this realm ſo to do, hath and keepeth in his cuſtody a greyhound* [*gun, net,* &c.] *to kill and deſtroy the game: Theſe are therefore to command you in his majeſty's name to enter into, and ſearch in the day time, the houſes, outhouſes, and other places of him the ſaid* A. O. *at* ——— *aforeſaid, and if you there find any greyhound,* &c. *that you ſeize and keep the ſame for the uſe of* A. L. *eſquire, lord of the manor of* ——— *in which manor the ſaid houſes, outhouſes, and other places, are ſituate and do lie, or otherwiſe that you cut in pieces or deſtroy the ſame. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year,* &c.

C. Warrant againſt a perſon for keeping dogs and engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To———

WHEREAS *complaint hath this day been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the county of* ——— *aforeſaid, upon the oath of* A. I. *of* ——— *in the ſaid county, yeoman, that* A. O. *of the pariſh of* ——— *in the ſaid county, ſhoemaker, doth keep* [or *uſe*] *a greyhound,* &c. *to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do, contrary to the ſtatutes in ſuch caſe made and provided: Theſe are therefore in his majeſty's name to command you, that you do forthwith upon ſight hereof apprehend the ſaid* A. O. *and bring him before me to anſwer the premiſſes, and to be further dealt with according to law. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

D. Conviction of keeping dogs and engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* ——— *in the county aforeſaid,* A. I. *of* ——— *cometh before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the*

king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and giveth me the ſaid juſtice to underſtand and be informed, that one A. O. *of the pariſh of* ——— *in the county aforeſaid, ſhoemaker, on the* ——— *day of* ——— *in the* ——— *year aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, did keep and uſe a certain dog, called a greyhound, to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do, againſt the form of the ſtatute in that caſe made and provided: And afterwards upon the aforeſaid day, and in the year firſt abovementioned, he the ſaid* A. O. *being brought before me by my warrant for that purpoſe, is aſked by me the ſaid juſtice, if he can ſay any thing for himſelf, why he the ſaid* A. O. *ſhould not be convicted of the premiſſes above charged upon him in form aforeſaid; who pleadeth that he is not guilty of the ſaid offence: nevertheleſs on the day aforeſaid, in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, one credible witneſs, to wit,* A. W. *of* ——— *yeoman, cometh before me the aforeſaid juſtice, and before me the ſame juſtice upon his oath on the holy goſpel to him then and there by me the aforeſaid juſtice adminiſtred, depoſeth, ſweareth, and upon his oath aforeſaid affirmeth, and ſaith, that the aforeſaid* A. O. *on the* ——— *day of* ——— *aforeſaid, in the year aforeſaid, at the pariſh of* ——— *aforeſaid, in the county aforeſaid, did keep and uſe a certain dog called a greyhound, to kill and deſtroy the game: And thereupon the aforeſaid* A. O. *the day and year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, before me the ſame juſtice, by the oath of one credible witneſs aforeſaid, according to the form of the ſtatute aforeſaid, is convicted: And for his offence aforeſaid hath forfeited the ſum of* 5l. *of lawful money of* Great Britain, *to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof, I the ſaid juſtice to this preſent record of the conviction aforeſaid, have ſet my hand and ſeal at* ——— *aforeſaid, in the county aforeſaid, the day and year firſt abovewritten.*

If it ſhall be thought neceſſary to ſet forth ſpecially, that the defendant had not ſuch and ſuch qualifications, then in reciting the teſtimony of the witneſs, the conviction ſhould proceed thus:— *did keep and uſe a certain dog called a greyhound, to kill and deſtroy the game; And that he the ſaid* A. O. *then had not, nor yet hath, lands and tenements, nor any other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100l. per annum, *nor for term of life; nor any leaſe nor leaſes of* 99 *years, nor for any longer term, of the clear yearly value of* 150l. *and that he the ſaid* A. O. *then was not, nor yet is, the ſon and heir apparent of an eſquire, nor of any other perſon of higher degree; nor the owner nor keeper of any foreſt, park, chaſe, or warren; nor gamekeeper to any lord or lady of a manor: And thereupon* ———

E. Warrant to diſtrain 5*l.* for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To———

WHEREAS A. O. *of* ——— *in the ſaid county, ſhoemaker, is this day convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *a credible witneſs, for that he the ſaid* A. O. *being a perſon not qualified by the laws of this realm ſo to do, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *did keep and uſe in the pariſh of* ——— *aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 l. *to be diſtributed as herein after is mentioned: Theſe are therefore in his ſaid majeſty's name, to command you to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*four*] *days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of* 5 l. *to* A. I. *of* ——— *in the ſaid county, yeoman, who informed me of the ſaid offence, and the other half of the ſaid ſum of* 5 l. *to the overſeers of the poor of the pariſh of* ——— *aforeſaid, where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; returning the overplus on demand unto him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods of the ſaid* A. O. *whereon to levy the ſaid ſum of* 5 l. *that then you certify the ſame to me, together with the return of this precept. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of* ———.

F. Commitment for want of diſtreſs, for keeping dogs and engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, ſhoemaker, was on the* ——— *day of* ——— *in the* ——— *year of* ——— *convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he ſaid* A. O. *not being a perſon by the laws of this realm qualified ſo to do, on the* ——— *day of* ——— *in the year aforeſaid, did keep and uſe in the pariſh of* ——— *aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O.

hath forfeited the ſum of 5 l. *of lawful money of* Great Britain; *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of* 5 l. *by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſtatute in that behalf made; and whereas it duly appears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be had whereon to levy the ſame: Theſe are therefore to command you the ſaid conſtable of* ——— *aforeſaid, to apprehend the body of the ſaid* A. O. *and him ſafely to convey to the houſe of correction at* ——— *in the ſaid county, and there deliver him to the ſaid keeper thereof, together with this precept. And I do alſo hereby command you, the ſaid keeper of the ſaid houſe of correction, to receive into your cuſtody in the ſaid houſe of correction the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months: and for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year,* &c.

G. *Certiorari* bond, on a conviction for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 2.

KNOW *all men by theſe preſents,* &c. *Whereas the abovebound* A. O. *was lately convicted before* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the county of* ——— *aforeſaid, of keeping and uſing at* ——— *aforeſaid in the ſaid county, a greyhound to kill and deſtroy the game; And whereas the ſaid* A. O. *hath ſince his ſaid conviction ſued out his majeſty's writ of* certiorari *to remove the ſame, and the proceedings thereupon, before the king himſelf wherever he ſhall be in* England *on* ——— [*the day of the return of the* certiorari]: *The condition of the above obligation is ſuch, that if the abovebound* A. O. *do and ſhall (according to the true intent and meaning of the ſtatute in ſuch caſe made) well and truly pay to the ſaid* A. I. *within* 14 *days after the ſame conviction ſhall be confirmed, or a* procedendo *granted thereupon, his full coſts and charges which he ſhall ſuſtain touching or concerning the ſaid conviction and removal thereof by the ſaid writ of* certiorari; *then the abovewitten obligation ſhall be void, otherwiſe of force.*

H. Warrant againſt a higler having game in his poſſeſſion; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland { To the conſtable of ———

WHEREAS A. I. *of* ——— *hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that on the* ——— *day of* ——— *now laſt paſt, he the ſaid* A. I. *did ſee in the poſſeſſion of* A. O. *of* ——— *in the pariſh of* ——— *in the county aforeſaid, innkeeper,*

keeper, at ——— *aforeſaid, in the pariſh and county aforeſaid, in the houſe of him the ſaid* A. O. *then and there one hare* [or, *did ſee him offer to ſell one hare,* or as the caſe ſhall be] *he the ſaid* A. O. *being no way qualified by the laws of this realm, to have the ſaid hare in his cuſtody or poſſeſſion; againſt the form of the ſtatute in that caſe made and provided: Theſe are therefore to command you, to bring the ſaid* A. O. *before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to anſwer the premiſſes, and to be further dealt withal according to law. Given under my hand and ſeal, the* ——— *day of* ——— *in the* ——— *year* &c.

I. Warrant to levy 5*l.* on the goods of a higler convicted of having game in his cuſtody; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of ———.

WHEREAS A. O. *of* ——— *in the pariſh of* ——— *in the county aforeſaid, higler, is on this preſent* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *at the pariſh of* ——— *aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof, he the ſaid* A. O. *hath forfeited the ſum of* 5 l. *Theſe are therefore to require you to levy the ſaid ſum of* 5 l. *by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum of* 5 l. *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained as aforeſaid, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of* 5 l. *to* A. I. *of* ——— *yeoman, who informed me of the ſaid offence, and the other half to the poor of the pariſh of* ——— *aforeſaid, within which pariſh the ſaid offence was committed; returning to him the ſaid* A. O. *the overplus on demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be had of the goods of the ſaid* A. O. *that you certify the ſame to me together with the return of this precept. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of* ———

K. Commitment on the ſame for want of diſtreſs; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, higler, was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *of* ——— *a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *at the pariſh of* ——— *aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 l. *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of* 5 l. *by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſaid ſtatute; And whereas it duly appears to me, as well on the oath of the ſaid conſtable of* ——— *as otherwiſe, that he the ſaid conſtable of* ——— *hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be found whereon to levy the ſame; Theſe are therefore to require you the conſtable of* ——— *aforeſaid, to carry the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, and deliver him to the ſaid keeper thereof, together with this precept. And you the ſaid keeper are hereby commanded to receive into your cuſtody in the ſaid houſe of correction him the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months, without bail or mainprize; and for your ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the* ——— *day of* ———.

L. Mittimus for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Weſtmorland. { To the keeper of his majeſty's gaol at ——— in the county of ——— aforeſaid, and to his deputy or deputies there, and to every of them.

FORASMUCH *as this preſent day,* A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, did arreſt and bring before me at* ——— *in the ſaid county, one* A. O. *late of* ——— *in the ſaid county, taylor, whom they had ſeen and found the ſame day (as they ſaid) ſhooting in a hand gun, charged with powder and hail ſhot, at a coney, in a certain place in* ——— *within the ſaid county, called* ——— *contrary to the law of the realm, and thereupon prayed that juſtice might be done in that behalf: I* John Moore,

Moore, *eſquire, being the next juſtice of the peace in the ſaid county to the place aforeſaid, did then at* ——— *aforeſaid, upon the ſaid requeſt, take the examination of the ſaid* A. O. *and did alſo then and there hear the proofs of them the ſaid* A. I. *and* B. I. *touching the ſaid offence; And for that it did then manifeſtly appear unto me, as well by the teſtimonies of them the ſaid* A. I. *and* B. I. *as alſo by the plain confeſſion of him the ſaid* A. O. *that he the ſaid* A. O. *had not then lands, tenements, fees, annuities or offices, to the yearly value of an hundred pounds, and that he had ſhot in the ſaid hand gun in manner and form as is aforeſaid: I do ſend you herewithal the body of him the ſaid* A. O. *as lawfully convicted of the ſaid offence before me, requiring you in his majeſty's name, to receive him into your ſaid gaol, and him there ſafely to keep, until he ſhall have truly paid the pain and forfeiture of* 10l. *of lawful money of* Great Britain, *laid upon him for his ſaid offence by the ſtatute made in the three and thirtieth year of the reign of King* Henry *the eighth; that is to ſay, the one moiety thereof to our ſovereign lord the king, and the other moiety to them the ſaid* A. I. *and* B. I. *the firſt bringers of him before me. And this ſhall be your ſufficient warrant in this behalf. Hereof fail you not, as you will anſwer for your contempt at your peril. Given under my hand and ſeal at* ——— *aforeſaid, in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

M. Record of the conviction for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Weſtmorland. BE *it remembered, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, one* A. O. *late of* ——— *in the county aforeſaid, taylor, found and ſaw, at* ——— *in the county aforeſaid, the day and year aforeſaid, with a hand gun charged with gunpowder and leaden hail ſhot, ſhooting and diſcharging the ſaid gun, at a certain coney then being in a certain place there, called* ——— *againſt the form of the ſtatute in that caſe made and provided; and therefore, the day and year aforeſaid, him the ſaid* A. O. *at* ——— *aforeſaid, they did arreſt, and at* ——— *aforeſaid before me* ——— *eſquire, one (and next unto the ſaid place called* ———) *of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſame county committed, then with them did bring, requeſting thereupon juſtice to be done; which requeſt being heard, I the ſaid* J. P. *at* ——— *aforeſaid, the day and year aforeſaid, duly thereupon have examined the aforeſaid* A. O. *at* ——— *aforeſaid, and the proofs of the aforeſaid* A. I *and* B. I. *in this behalf have taken: And becauſe that as well by the proofs aforeſaid, as by the confeſſion of him the ſaid* A. O. *at* ——— *aforeſaid, then and there it hath appeared to me manifeſtly, that the aforeſaid* A. O. *at* ——— *aforeſaid, when he had not in his own right, nor in the right of his wife, to his own uſe, nor any other to the uſe of the ſaid* A. O. *had lands, tenements, fees, annuities or offices to the*

the yearly value of one hundred pounds, in the hand gun aforesaid, in manner and form aforesaid, did shoot, against the form of the statute aforesaid; I the said J. P. *the aforenamed* A. O. *at* ——— *aforesaid, the day and year aforesaid, to the next gaol of our said lord the king, at* ——— *in the county aforesaid (of the trespass aforesaid before me convicted) have committed, there to remain until the penalty and forfeiture of* 10l. *of lawful money of* Great Britain, *he shall truly pay or cause to be paid, to wit, one moiety thereof to our said lord the king, and the other moiety thereof to the said* A. I. *and* B. I. *the first bringers of the said* A. O. *before me as is aforesaid. In witness of all which, I the aforesaid* J. P. *to these presents have put my seal. Given at* ——— *aforesaid, the day and year first above written.*

N. Conviction for killing deer, from *Tremaine's entries*, 328, 329. which conviction was on the 13 *C.* 2. *c.* 10. but is here altered to grounds incloſed, to bring the offence within the 3 *W.* *c.* 10. which is done by the addition only of that ſingle word [*incloſed*] with the alteration of the penalty.

Cumberland. BE *it remembred, that on the third day of* September *in the year of the reign of our lord* Charles *the* ſecond *now king of* &c. *the* thirty ſecond, *one* Benjamin Granger *of* ——— *gentleman, cometh before me* John Aglionby, *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county of* C. *at* G. *in the ſame county, and giveth me to underſtand and be informed, that one* James Dobſon, *late of* ——— J. B. *late of* ——— *and* L. M. *late of* ——— *on the* 25th *day of* Auguſt *in the year of the reign of our ſaid lord the now king, the* 32d *aforeſaid, in a certain park then of the moſt noble* Henry *duke of* Norfolk, *called* Grayſtock *park, in the pariſh of* Grayſtock, *in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully hunted, and a certain fallow deer of the ſaid duke then in the ſame park killed, took, and carried away, without the conſent of the ſaid duke then owner of the ſaid park, or of* Andrew Huddleſton, *eſquire, then being chiefly intruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided: And afterwards, to wit, on the aforeſaid* third *day of* September *in the* 32d *year aforeſaid, two credible witneſſes, that is to ſay,* J. H. *of* ——— *and* T. B. *of* ——— *come before me the ſaid juſtice aſſigned* &c. *at* G. *aforeſaid, and before me the ſaid juſtice aſſigned* &c. *upon their oath on the holy goſpel of* god *to them then and there by me the aforeſaid juſtice aſſigned* &c. *by the authority of the ſtatute aforeſaid adminiſtred and given, do depoſe, ſwear, and ſay, and each of them doth depoſe, ſwear, and ſay, upon their oath aforeſaid, that the aforeſaid* J. D. J. B. *and* L. M. *on the aforeſaid* 25th *day of* Auguſt *in the* 32d *year*

year aforeſaid, in the aforeſaid park and ground incloſed, of the aforeſaid duke of Norfolk, *in the pariſh of* Grayſtock *aforeſaid, unlawfully hunted, and the aforeſaid fallow deer of him the ſaid duke, then in the ſaid park and ground incloſed, took, killed, and carried away, without the conſent of the ſame duke then owner of the ſaid park and ground incloſed, or of the aforeſaid* A. H. *eſquire, then with the cuſtody of the ſame park and ground incloſed as is aforeſaid chiefly intruſted. And thereupon they the aforeſaid* J. D. J. B. *and* L. M. *on the ſaid* 3d *day of* September *in the* 32d *year aforeſaid, before me the ſaid juſtice aſſigned* &c. *by the oath of two credible witneſſes aforeſaid, according to the form of the ſtatute aforeſaid, are, and every of them is, convicted. And for the offence aforeſaid, every of them the aforeſaid* J. D. J. B. *and* L. M. *according to the form of the ſtatute aforeſaid, hath ſeverally forfeited the ſum of* 30l. *one third part thereof to the aforeſaid* R. G. *the informer in this behalf as is aforeſaid, another third part thereof to the uſe of the poor of the ſaid pariſh of* G. *within which pariſh the offence aforeſaid was committed, and the other third part thereof to the duke aforeſaid, owner of the deer aforeſaid. In witneſs whereof I the aforeſaid juſtice to this preſent record of the conviction as aforeſaid, have ſet my hand and ſeal, at* G. *aforeſaid, on the day and year firſt abovementioned.*

John Aglionby.

O. Warrant of diſtreſs for hunting and killing deer; on the 3 *W.* *c.* 10. *ſ.* 2.

Weſtmorland. { To ——.

WHEREAS A. O. *of* —— *yeoman, is this day duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to the keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *of* —— *yeoman, a credible witneſs, for that he the ſaid* A. O. *on the* —— *day of* —— *in the* —— *year of* —— *in a certain park, then of Sir* P. M. *baronet, in the pariſh of* —— *in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully did hunt, and a certain fallow deer of the ſaid Sir* P. M. *baronet, then in the ſame park did kill, take, and carry away, without the conſent of the ſaid Sir* P. M. *baronet, then owner of the ſaid park, or of any other perſon then chiefly intruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided; by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 30l. *of lawful money of* Great Britain, *to be diſtributed as herein after is mentioned:*

Theſe are therefore in his ſaid majeſty's name to command you to levy the ſaid ſum by diſtreſs of the goods and chattels of him the ſaid A. O. *And if within the ſpace of* [*ſix*] *days next after ſuch di-*

ſtreſs by you taken, the ſaid ſum of 30l. *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained as aforeſaid; and out of the money ariſing by ſuch ſale, that you do pay one third part of the ſaid ſum of* 30l. *to* A. I. *of* ——— *in the ſaid county, yeoman, who informed me of the ſaid offence; and one third part unto the churchwardens or overſeers of the poor of the ſaid pariſh of* ——— *for the uſe of the poor of the ſaid pariſh, and the other third part to the ſaid* ——— *owner of the ſaid deer; returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be had or found, by and on which the ſaid ſum of* 30l. *may be levied, you are hereby required to certify the ſame to me, within two days after the date of this preſent warrant. Given under my hand and ſeal, at* ——— *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

P. Commitment for want of diſtreſs, for hunting and killing deer; on the 3 *W.* *c.* 10. *ſ.* 2.

Weſtmorland. To the conſtable of ——— in the ſaid county, and to the keeper of the common gaol at ——— in the ſaid county, and to the chief officer of the market town of ——— in the ſaid county, and to every of them.

WHEREAS A. O. *of* ——— *labourer, was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *of* ——— *yeoman, a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year* ——— *in a certain park then of* ——— *eſquire, in the pariſh of* ——— *in the ſaid county, then and long before and yet being ground incloſed wherein deer then were and long before had been uſually kept, unlawfully did hunt, and a certain fallow deer of the ſaid* ——— *eſquire, then in the ſame park did kill, take and carry away, without the conſent of the ſaid* ——— *then owner of the ſaid park, or of any other perſon then chiefly intruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided; by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 30l. *of good and lawful money of* Great Britain; *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of* 30l. *by diſtreſs of the goods and chattels of him the ſaid* A. O. *and to pay over the ſaid ſum of* 30l. *according as is directed by the ſtatute aforeſaid; And whereas it duly appears to me, as well on the oath of the ſaid conſtable of* ——— *as otherwiſe, that he the ſaid conſtable of* ——— *hath uſed his beſt endeavours to levy the ſaid ſum*

of 30*l.* *on the goods and chattels of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be found whereon to levy the ſame: Therefore in purſuance of the ſtatute aforeſaid, I do hereby command you the ſaid conſtable of* ——— *him the ſaid* A. O. *to apprehend and ſafely to convey to the ſaid common gaol at* ——— *aforeſaid in the county aforeſaid, and him to deliver to the keeper thereof aforeſaid, together with this precept: And I do hereby command you the ſaid keeper of the gaol aforeſaid, to receive into your cuſtody in the ſaid gaol him the ſaid* A. O. *and him there ſafely to keep for the ſpace of one whole year now next enſuing; ſaving that within the ſaid year you deliver him the ſaid* A. O. *to the chief officer of* ——— *being the next market town next adjoining to the place where the ſaid offence was committed, or to his under officer or officers, together with this precept, who are hereby reſpectively required to ſet the ſaid* A. O. *in the pillory in the ſaid market town by the ſpace of one hour on ſome market day. And hereof fail not, as you will reſpectively anſwer the ſame at your perils. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* ——— *in the year* ———.

Q. Warrant to ſearch for veniſon or ſkins; on the 3 *W.* *c.* 10. *ſ.* 3.

Weſtmorland. { To the conſtable of ———.

WHEREAS A. I. *of* ——— *in the ſaid county, yeoman, hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that divers fallow deer have of late been unlawfully killed in, and taken and carried away from the park and ground incloſed of* ——— *at* ——— *in the ſaid county, and that he the ſaid* A. I. *hath juſt cauſe to ſuſpect, and doth ſuſpect, that veniſon or the ſkins of deer, or toyls whereby to take and kill deer, are concealed in the houſes, outhouſes, or other places belonging to the ſaid houſes of* A. O. *of* ——— *yeoman, and* B. O. *of* ——— *yeoman, at* ——— *aforeſaid in the county aforeſaid: Theſe are therefore in his ſaid majeſty's name, and by virtue of the ſtatute in that caſe made and provided, to require you that you do forthwith upon ſight hereof, enter into and ſearch the ſaid houſes, outhouſes, and other places belonging to the ſaid houſes, of them the ſaid* A. O. *and* B. O. *at* ——— *aforeſaid; and if on ſuch ſearch you ſhall there find any veniſon, or ſkin of any deer, or toyls aforeſaid, that you do apprehend the perſon or perſons, in whoſe houſes, outhouſes, or other places aforeſaid, ſuch veniſon, ſkin, or toyls ſhall be found, and him or them ſo apprehended do carry before ſome of his ſaid majeſty's juſtices of the peace in and for the ſaid county, to be examined concerning the premiſſes, and further dealt withal according to law. Given under my hand and ſeal, the* ——— *day of* ——— *in the year* ———.

Gaming.

Gaming not an offence at common law.

1. MR. *Dalton* ſays, that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *malum in ſe*, of their own natures, but only prohibited by ſtatute. *Dalt. c.* 46.

Gaming houſe a nuſance.

2. But it hath been ſaid, that all common gaming houſes are nuſances in the eye of the law, as being great temptations to idleneſs, and apt to draw together numbers of diſorderly perſons. 1 *Haw.* 198.

Gaming houſes prohibited by the 33 H. 8.

3. By the ſtatute of the 33 *H.* 8. *c.* 9. No perſon ſhall for his gain, lucre, or living, keep any common houſe, alley, or place of bowling, coyting, cloyſh cayls, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40*s.* a day. *ſ.* 11.

But it was reſolved upon this clauſe, in the third year of *J.* 1. that if the gueſts in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, theſe are not within this ſtatute; for altho' the games be uſed in any inn, tavern, or other houſe, yet if the houſe be not kept for gaiming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the houſe, this is not within the ſtatute, nor is ſuch perſon that plays in ſuch houſe that is not kept for lucre or gain, within the penalty of that law. *Dalt. c.* 46.

And moreover, by the ſame ſtatute it is further enacted, that every perſon uſing and haunting any the ſaid houſes and plays, and there playing, ſhall forfeit 6*s.* 8*d.* 33 *H.* 8. *c.* 9. *ſ.* 12.

And all and every juſtices of the peace, mayors, ſheriffs, and other head officers, may enter all ſuch houſes and places, where ſuch games ſhall be ſuſpected to be holden; and as well the keepers of the ſame, as alſo the perſons there reſorting and playing, may take, arreſt, and impriſon, and keep in priſon, until the ſaid keepers have found ſureties to the king's uſe, to be bound by recognizance or otherwiſe, no longer to uſe, keep, or occupy any ſuch houſe, play, game, alley, or place; and alſo that the perſons there ſo found, be in like caſe bound by themſelves, or with ſureties, no more to play, haunt, or exerciſe from thenceforth, in, at, or to any of the ſaid places, or at any of the ſaid games. *id. ſ.* 14.

And the mayors, ſheriffs, bailiffs, conſtables, and other head officers within every city, borough, or town, ſhall make due ſearch weekly, or at the furtheſt once a month, in all places where any ſuch houſes or places ſhall be ſuſpected to be kept; and if they ſhall not make ſuch ſearch at the fortheſt once a month, if the caſe ſo require, every ſuch perſon offending ſhall forfeit 40*s.* for each month. *id. ſ.* 15.

And by the ſame act, no manner of artificer, handicraftſman, huſbandman, apprentice, laboarer, ſervant at huſbandry, journeyman,

man, or ſervant of artificer, mariners, fiſhermen, watermen, or any ſerving man, ſhall play at the tables, tennis, dice, cards, bowls, claſh coyting, logating, or any other unlawful game, out of *Chriſtmas*, on pain of 20*s.* and in *Chriſtmas* to play at the ſaid games only in their maſters houſes, or in their maſters preſence; and alſo no perſon ſhall at any time play at bowls in open places out of his garden or orchard, on pain of 6*s.* 8*d.* *id. ſ.* 16.

But any maſter may licenſe his ſervant to play at cards, dice, or tables with himſelf, or with any other gentleman openly in his houſe, or in his preſence. *id. ſ.* 22.

And any nobleman, or other perſon having 100*l.* a year, may command or licenſe his ſervants, or family of his houſe, to play within the precinct of his houſe, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well amongſt themſelves, as others repairing to the ſame houſe. *id. ſ.* 23.

And all juſtices of the peace, mayors, bailiffs, ſheriffs, and other head officers, and every of them, *finding or knowing* any perſon uſing unlawful games, contrary to this act, may commit every ſuch offender to ward, there to remain without bail or mainpriſe, till he be bound by obligation to the king's uſe, in ſuch ſum as by the diſcretion of the ſaid juſtices or other ſuch officers ſhall be thought reaſonable, that they ſhall not from thenceforth uſe ſuch unlawful games. *id. ſ.* 16.

And by the 2 *G.* 2. *c.* 28. Where it ſhall be *proved on the oath of two witneſſes* before any juſtice of the peace, as well as where he ſhall find upon his own view, that any perſon hath uſed any unlawful game contrary to the ſaid ſtatute, the ſaid juſtice ſhall have power to commit him to priſon without bail, unleſs and until he ſhall enter into recognizance, with ſureties or without at the diſcretion of the juſtice, that he ſhall not from thenceforth play at or uſe ſuch unlawful game. *ſ.* 9.

And where any the forfeitures abovementioned ſhall be found within the precincts of any leet, the lord ſhall have one half, and the other half ſhall be to him that ſhall ſue in any of the king's courts: and elſewhere, they ſhall be half to the king, and half to him that ſhall ſue in like manner. 33 *H.* 8. *c.* 9. *ſ.* 18.

But by the 31 *El.* *c.* 5. All ſuits to be purſued upon any ſtatute (that is, any ſtatute then in force) for uſing any unlawful game, ſhall be ſued and proſecuted, or otherwiſe heard and determined, in the general quarter ſeſſions or aſſizes of the county where the offence ſhall be committed, or in the leet within which it ſhall happen, and not in any wiſe out of the county. *ſ.* 7.

And no privilege of parliament ſhall be allowed to any perſon, againſt whom a proſecution ſhall be commenced, for keeping any common gaming houſe, or place for playing at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 7.

Gaming houſe within London and 20 miles thereof.

4. By the 25 *G.* 2. *c.* 36. any houſe, room, garden, or other place, kept for publick dancing, muſick, or other entertainment of the like kind, in *London*, or within 20 miles thereof, without licence as hereafter following (except the theatres of *Drury-Lane*, *Covent-Garden*, the *Hay-Market*, and other entertainments exerciſed by letters patents or licence of the crown, or of the lord

chamberlain) ſhall be deemed a diſorderly houſe or place, and the keeper thereof ſhall forfeit 100 *l.* with full coſts to him who ſhall ſue (in ſix months) in any of the courts at *Weſtminſter*. And the perſon who ſhall appear to act as maſter, or as having the management of ſuch diſorderly houſe, ſhall be deemed the keeper thereof.

Which ſaid licence ſhall be granted at the laſt preceding *Michaelmas* ſeſſions, and ſhall be ſigned and ſealed by four juſtices in open court, and afterwards be publickly read by the clerk of the peace, with the names of the juſtices ſubſcribing the ſame; and no licence ſhall be granted at any adjourned ſeſſions; nor ſhall any fee be taken for the ſame. And there ſhall be inſerted in ſuch licence, and made conditions thereof, that the words following ſhall be affixed in large capital letters over the door or entrance of every ſuch licenſed houſe or place, *viz. Licenſed purſuant to act of parliament of the twenty-fifth of king* George *the ſecond*; and that it ſhall not be opened before five in the afternoon. And in caſe of a breach of either of the ſaid conditions, the licence ſhall be forfeited, and revoked by the juſtices at the next ſeſſions, and ſhall not be renewed.

And to encourage proſecutions againſt perſons keeping bawdy houſes, gaming houſes, or other diſorderly houſes, the conſtable, on notice given him in writing by any two inhabitants of the pariſh, paying ſcot and lot, of any perſon keeping ſuch houſe, ſhall forthwith go with them to a juſtice of the peace; and ſhall (on their making oath that they believe the contents of ſuch notice to be true, and entring into a recognizance of 20 *l.* each to produce evidence of the offence,) enter into a recognizance of 30 *l.* to proſecute with effect ſuch perſon at the next ſeſſions or aſſizes, as to the juſtice ſhall ſeem meet: and on the conſtable entring into ſuch recognizance, the juſtice ſhall iſſue his warrant for bringing the accuſed perſons before him, and ſhall bind them over to appear at the ſaid ſeſſions or aſſizes, and ſhall alſo, if he thinks fit, demand and take ſurety for their good behaviour in the mean time.

And if the conſtable ſhall neglect or refuſe, upon ſuch notice, to go before a juſtice, or to enter into recognizance, or ſhall be wilfully negligent in carrying on the proſecution, he ſhall forfeit 20 *l.* to each of the ſaid inhabitants.

And on trial, any perſon may give evidence againſt the defendant, notwithſtanding his being a pariſhioner, or having entred into ſuch recognizance.

And the conſtable ſhall be allowed all the reaſonable expences of the proſecution, to be aſcertained by two juſtices; and ſhall be paid the ſame by the overſeers of the poor: and if ſuch perſon be convicted, the overſeers ſhall alſo forthwith pay 10 *l.* to each of ſuch inhabitants, on pain of forfeiting double to the ſaid perſons.

And no indictment of ſuch offence ſhall be removed by *certiorari*.

Loſing 10l. at a time.

5. By the 9 *An. c.* 14. Any perſon who ſhall at any time or ſitting, by playing at cards, dice, tables, or other game whatſoever, or by betting on the ſides of ſuch as do play, loſe to any one

one or more perſons ſo playing or betting, in the whole the ſum or value of 10*l.* and ſhall pay or deliver the ſame, or any part thereof; the perſon ſo loſing and paying or delivering the ſame, ſhall be at liberty in three months to ſue for and recover the ſame with coſts, in any court of record: and if he ſhall not ſue in three months, it ſhall be lawful for any perſon to ſue for and recover the ſame and treble value, with coſts; half to ſuch perſon who ſhall ſue, and half to the poor. *ſ.* 2.

And every perſon who ſhall ſo be liable to be ſued for the ſame, ſhall be obliged and compellable to anſwer on oath ſuch bill as ſhall be preferred againſt him, for diſcovering the ſum of money or other thing ſo won. 9 *An.* *c.* 14. *ſ.* 3. 18 *G.* 2. *c.* 34. *ſ.* 3.

Or other game whatſoever] *M.* 15 *G.* 2. *Goodburn* and *Marley*. It was determined, that *horſe races* are within theſe general words. *Str.* 1159.

6. And by the 18 *G.* 2. *c.* 34. If any perſon ſhall win or loſe at play, or by betting, at one time, the value of 10*l.* or within the ſpace of 24 hours the value of 20*l.* he ſhall be liable to be indicted for ſuch offence, in ſix months, either in the king's bench or at the aſſizes; and being convicted, ſhall be fined five times the value of the ſum won or loſt, which (after ſuch charges as the court ſhall judge reaſonable, allowed thereout to the proſecutor and evidence) ſhall go to the poor. *ſ.* 8. Loſing 10l. at a time, or 20l. in 24 hours.

And if any offender ſhall diſcover another offender, ſo that he be convicted, the diſcoverer ſhall be diſcharged from all penalties by reaſon of ſuch offence, if not before convicted thereof, and ſhall be admitted as an evidence to prove the ſame. *ſ.* 9.

But nothing in this act ſhall repeal the aforeſaid act of 9 *An.* *id.* *ſ.* 10.

7. If any perſon ſhall play at cards, dice, tables, tennis, bowls, kittles, ſhovelboard, or any other paſtime or game whatſoever (other than for ready money) or bet on the ſides of ſuch as ſhall play, and ſhall loſe any ſum or other thing, exceeding 100*l.* at any one time or meeting, upon ticket, or credit, or otherwiſe, and ſhall not pay down the ſame at the time when he ſhall loſe the ſame; in ſuch caſe he ſhall not be bound to make it good, but the contract for the ſame, and for every part thereof, and all aſſurances and ſecurities for the ſame ſhall be void; and the winner ſhall forfeit treble value of all ſuch ſums as he ſhall ſo win above 100*l.* half to the king, and half to him that ſhall ſue in one year in the courts at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 3. Loſing above 100l. at a time.

8. And all notes, bills, bonds, judgments, mortgages, or other ſecurities, where the whole or any part of the conſideration ſhall be for money or any other valuable thing, won by playing at cards, dice, tables, tennis, bowls, or other game whatſoever; or by betting on the ſides of ſuch as do game; or for the reimburſing or repaying any money knowingly lent or advanced, at the time and place of ſuch play, to any perſon ſo gaming or betting, or that ſhall (during ſuch play) ſo play or bett,—ſhall be void: And where ſuch ſecurities ſhall be of lands, or ſuch as incumber or af- Securities to be void.

fect the ſame; they ſhall enure and be to the ſole uſe and benefit of, and devolve upon ſuch perſon as might have ſuch lands, in caſe the ſaid grantor, or perſon ſo incumbring the ſame, had been dead: And all conveyances to hinder them from devolving on ſuch perſon, ſhall be void. 9 *An.* *c.* 14. *ſ.* 1.

Securities] *H.* 19 *G.* 2. *Barjeau* and *Walmſley*. The plaintiff and defendant gamed together, at toſſing up for five guineas at a time. And the plaintiff having won all the defendant's ready money, lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was inſiſted for the defendant, that by the 9 *An.* *c.* 14. the plaintiff could maintain no action; for by that act, all *ſecurities* for money lent to game with ſhall be void; and the borrowing on an agreement to pay, is *a ſecurity*. But *Lee* Ch. J. held, that this was not a caſe within the act, for there is not the word *contract*, as in the ſtatute of uſury; and the word *ſecurities*, as it ſtands in this act, muſt mean laſting liens upon the eſtate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written ſecurities. Wherefore the plaintiff obtained a verdict for 126 *l.* *Str.* 1249.

Perſons ſuſpected of ſupporting themſelves by gaming.

9. And any two juſtices may cauſe to come, or to be brought before them, every perſon whom they ſhall have juſt cauſe to ſuſpect to have no viſible eſtate, profeſſion, or calling, to maintain themſelves by, but do for the moſt part ſupport themſelves by gaming; and if ſuch perſon ſhall not make it appear to the ſaid juſtices, that the principal part of his expences is not maintained by gaming, they ſhall require of him ſufficient ſecurities for his good behaviour for 12 months, and in default of his finding ſuch ſecurities, ſhall commit him to the common gaol, until he ſhall find ſuch ſecurities as aforeſaid. 9 *An.* *c.* 14. *ſ.* 6.

And if he ſhall, during the time for which he ſhall be bound, at any one time or ſitting, play or bet for any ſums or other thing exceeding in the whole the value of 20 *s.* ſuch playing ſhall be deemed a forfeiture of the recognizance. *ſ.* 7.

Cheating.

10. If any perſon ſhall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, ſhovelboard; or by cockfightings, horſe races, dog matches, foot races, or other paſtimes or games; or by bearing a ſhare in the ſtakes; or by betting on the ſides of ſuch as ſhall play, act, ride, or run as aforeſaid,——win any ſum or other valuable thing; he ſhall forfeit treble the value, half to the king, and half to the party grieved (if he ſhall ſue in ſix months), otherwiſe to any perſon who ſhall ſue in one year next after the ſaid ſix months, in any of the courts at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 2.

And by the 9 *An.* *c.* 14. If any perſon ſhall by any fraud or ſhift, couſenage, circumvention, deceit, or unlawful device, or ill practice whatſoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforeſaid, or bearing a ſhare in the ſtakes, or betting on the ſides of ſuch as do play, win any ſum of money

or

or other valuable thing, and ſhall be convicted thereof upon indictment or information; he ſhall forfeit five times the value of ſuch money or other thing ſo won, and ſhall be deemed infamous and ſuffer ſuch corporal puniſhment as in caſes of wilful perjury; and ſuch penalty to be recovered by ſuch perſon as ſhall ſue for the ſame, by ſuch action as aforeſaid. *ſ.* 5.

T. 9 *G.* 2. *K.* and *Luckup.* The defendant was convicted on an information upon this act, which ſays, that he ſhall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine ſhould be ſet upon the defendant, if he refuſed to ſpeak with the proſecutor. But by the court, All the judgment we can give is, *that he is convicted*; and a new action muſt be brought upon that judgment for the forfeiture, which was thought ſufficient to deter the offenders. In the caſe of recuſancy, there is no other judgment. And the defendant was diſcharged, without any fine or coſts. *Str.* 1048.

Quarrelling.

11. And for the preventing ſuch quarrels as may happen on the account of gaming; if any perſon ſhall aſſault and beat, or challenge to fight, any other perſon whatſoever, on account of any money won by gaming, playing, or betting, at any the games aforeſaid, he ſhall, on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and perſonal eſtate whatſoever, and ſhall alſo ſuffer impriſonment without bail or mainpriſe, in the common gaol of the county where the conviction ſhall be had, during the term of two years. 9 *An.* *c.* 14. *ſ.* 8.

Royal palaces excepted.

12. It is generally provided by the ſeveral ſtatutes, that nothing therein ſhall hinder any perſon from playing at any the games aforeſaid, within any of the king's royal palaces, where he ſhall then reſide.

Lottery, a nuſance.

13. By the 10 & 11 *W.* *c.* 17. All lotteries are declared to be publick nuſances; and all grants, patents, and licences for ſuch lotteries, to be againſt law. *ſ.* 1.

Keeping or playing at a lottery.

14. No perſon ſhall expoſe to be played, drawn, or thrown at, or ſhall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatſoever: and every perſon who ſhall expoſe to be played, drawn, or thrown at, any ſuch lottery, play, or device, ſhall forfeit 500 *l.* one third to the king, one third to the poor, and one third with double coſts to him that ſhall ſue in the courts at *Weſtminſter*; and the offenders ſhall likewiſe be proſecuted as common rogues, according to the ſtatutes in that caſe made and provided. 10 & 11 *W.* *c.* 17. *ſ.* 2.

And every perſon who ſhall play, throw, or draw at any ſuch lottery, play, or device, ſhall forfeit 20 *l.* in like manner. *ſ.* 3.

And all juſtices of the peace, mayors, conſtables, and other civil officers ſhall uſe their utmoſt endeavours to prevent the drawing of any ſuch unlawful lottery, by all lawful ways and means; and every perſon who ſhall ſet up, or by writing or printing publiſh the ſetting up any ſuch unlawful lottery, with intent to have ſuch lottery drawn, ſhall forfeit 100 *l.* one third to the king, one

third to the poor, and one third with full coſts to him who ſhall ſue in the courts at *Weſtminſter*. 9 *An. c.* 6. *ſ.* 56.

Inſurances.

15. Every perſon who ſhall keep any office or place, for making inſurances on marriages, births, chriſtnings, or ſervice, or any other office or place, under the denominations of ſales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of ſmall ſums of money, ſhall forfeit 500 *l.* one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue. And every printer, or other perſon, who ſhall by writing or printing publiſh the ſetting up or keeping any ſuch office or place, ſhall forfeit 100 *l.* in like manner. 10 *An. c.* 26. *ſ.* 109.

Sales of lands or goods; and chances in publick lotteries.

16. Every perſon who ſhall keep any office or place, under the denomination of ſales of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things, for the improvement of ſmall ſums of money; or ſhall ſell or expoſe to ſale the ſame or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums of money by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by the chances of the prizes in ſome publick lottery; or ſhall deliver out tickets, to the perſons advancing ſuch ſums, to intitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall make, print, or publiſh, any propoſal or ſcheme of the like nature, under any denomination whatſoever, —— and ſhall be thereof convicted, on oath of one witneſs, by two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by any former act made againſt private lotteries, forfeit 500 *l.* one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs and ſale by warrant of ſuch juſtices, and ſhall alſo by ſuch juſtices be committed to the county gaol without bail for one whole year, and from thence till the ſaid ſum of 500 *l.* ſhall be paid: Provided that perſons aggrieved may appeal to the next quarter ſeſſions. And every perſon who ſhall be adventurer in, or any way contribute on the account of any ſuch ſales, lotteries, propoſals, or ſchemes, ſhall forfeit double the ſum contributed, with coſts, half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*. 8 *G. c.* 2. *ſ.* 36, 37.

And by the 12 *G.* 2. *c.* 28. If any perſon ſhall erect, ſet up, continue, or keep, any office or place, under the denomination of a ſale of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things, by way of lottery, or by lots, tickets, numbers or figures, cards or dice; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by chances of the prizes in ſome publick lottery eſtabliſhed by act of parliament, or ſhall deliver out tickets to the perſons advancing ſuch ſums, to intitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall expoſe to ſale any houſes, lands, advowſons,

preſentations

preſentations to livings, plate, jewels, ſhips, or other goods, by any game, method, or device whatſoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatſoever;——he ſhall, on conviction before any juſtice of the peace (or mayor) on the oath of one witneſs, or view of ſuch juſtice, or confeſſion, forfeit 200 *l.* by diſtreſs and ſale, by warrant of one juſtice of the county or town where the offence ſhall be committed; which ſaid forfeiture (after deducting reaſonable charges of the proſecution) ſhall go one third to the informer, and two thirds to the poor of the pariſh (except in *Bath*, where the ſaid two thirds ſhall go to the poor of the hoſpital there.) *ſ.* 1.

And if the offender ſhall not have ſufficient goods, whereon to levy the penalties, or ſhall not immediately pay or give ſecurity for the ſame; the juſtice, before whom he ſhall be convicted, may commit him to the common gaol, not exceeding ſix months. *ſ.* 8.

And if any witneſs ſhall neglect or refuſe to appear, upon ſummons, or ſhall refuſe to give evidence, or give falſe evidence; he ſhall forfeit 50 *l.* by diſtreſs, by warrant of the perſon iſſuing ſuch ſummons; and if he have not ſufficient goods whereon to levy the 50 *l.* he ſhall be committed to the common gaol for ſix months. 18 *G.* 2. *c.* 34. *ſ.* 4.

But if any perſon think himſelf aggrieved by the judgment of any juſtice or mayor, he may appeal to the next ſeſſions, giving reaſonable notice to the proſecutor, and entring into a recognizance before ſome juſtices of the peace where the conviction was made, with two ſureties, on condition to try ſuch appeal at ſuch next ſeſſions. And if the conviction ſhall be affirmed, the party appealing ſhall pay to the proſecutor treble coſts. 12 *G.* 2. *c.* 28. *ſ.* 5.

And no conviction ſhall be quaſhed by the ſeſſions for want of form; nor ſhall be removed by *certiorari*, till after determination in the ſeſſions. *id. ſ.* 6.

And if any juſtice, or mayor, ſhall neglect his duty herein; he ſhall forfeit 10 *l.* with full coſts, half to him that ſhall ſue in any court of record or at the aſſizes, and half to the poor. *id. ſ.* 9.

Moreover, every ſuch ſale of houſes, lands, advowſons, preſentations, plate, jewels, ſhips, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, ſhall be void; and the ſame being expoſed to ſale in manner aforeſaid, ſhall be forfeited to ſuch perſon as ſhall ſue for the ſame in any court of record, or at the aſſizes. *id. ſ.* 4.

And, finally, every perſon who ſhall be an adventurer in any of the ſaid games, lotteries, or ſales, ſhall forfeit 50 *l.* in like manner. *id. ſ.* 3.

Ace of hearts, faro, baſſet, and hazard.

17. The games of ace of hearts, faro, baſſet, and hazard, ſhall be deemed games or lotteries by cards or dice; and every perſon who ſhall ſet up, or keep theſe games, ſhall be liable to all

the abovementioned penalties, for ſetting up or keeping any the games or lotteries in this act mentioned. 12 G. 2. c. 28. ſ. 2.

And every perſon who ſhall play, ſet at, ſtake, or punt at any of the ſaid games, ſhall forfeit 50 l. in like manner. ſ. 3.

Paſſage. 18. Alſo the game of paſſage, and every other game with one or more die or dice, or with any other inſtrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables, only excepted) ſhall be deemed games or lotteries by dice, within the ſaid act of 12 G. 2. c. 28.—13 G. 2. c. 19. ſ. 9.

Roly poly. 19. Alſo by the 18 G. 2. c. 34. No perſon ſhall keep any houſe, room, or place for playing, or ſuffer any perſon within ſuch place, to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any perſon ſhall keep ſuch houſe, or ſuffer any perſon to play at roly poly, or other game with cards or dice prohibited by law, he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 G. 2. c. 28.—18 G. 2. c. 34. ſ. 1.

And if any perſon ſhall play at roly poly, or any game with cards or dice prohibited by law; he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 G. 2.—18 G. 2. c. 34. ſ. 2.

Foreign lotteries. 20. If any perſon ſhall, by colour of any grant from any foreign prince or ſtate, ſet up any lottery, or undertaking in the nature of a lottery, under any denomination whatſoever; or ſhall make, print, or publiſh any propoſal for any ſuch lottery or undertaking; or ſhall ſell or diſpoſe of any ticket in any foreign lottery; and ſhall be convicted thereof, on oath of one witneſs, before two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by former acts againſt unlawful lotteries, forfeit 200 l. one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo by them be committed to the common gaol for one year, and from thence till the ſaid ſum of 200 l. be paid: provided, that perſons aggrieved may appeal to the next quarter ſeſſions. 9 G. c. 19. ſ. 4, 5.

And by the 6 G. 2. c. 35. If any perſon ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any claſs, part, or diviſion thereof, or in any undertaking in the nature of a lottery; or ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or ſhall receive any money for any ſuch ticket, receipt, chance, or number, or in conſideration of any money to be repaid in caſe any ticket or number in any foreign or pretended foreign lottery, or any claſs, part, or diviſion thereof, ſhall prove fortunate; and ſhall be convicted thereof in the courts at *Weſtminſter*, or on the oath of one witneſs before two juſtices where the offence ſhall be committed, or the offender ſhall be found; he ſhall forfeit 200 l. one third to the king, one third to the informer,

and one third to the poor; The ſame (in caſe of conviction before the juſtices) to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo be committed to the common gaol for a year, and from thence till the 200 *l.* be paid: provided, that perſons aggrieved may appeal to the next quarter ſeſſions. *ſ.* 29, 30.

21. No perſon, other than the plaintiff and defendant, ſhall be incapacitated from being a witneſs, touching any offence againſt the laws for preventing exceſſive and deceitful gaming, by reaſon of having played, betted, or ſtaked at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 5. How far an offender may be a witneſs.

Gaol and Gaoler.

For breaking of gaol, ſee **Priſon breaking.**

I. Building and repairing of gaols.
II. Who ſhall have the keeping of gaols.
III. Gaoler ſhall receive criminals.
IV. How they ſhall be maintained.
V. Spirituous liquors not to be ſold in gaols.
VI. How priſoners may be ſet on work.
VII. How they ſhall be reſtrained and kept.
VIII. How they ſhall be delivered.
IX. Of gaolers permitting eſcapes.
X. Concerning debtors.
XI. Concerning the priſons of the King's bench *and* Marſhalſea.

I. Building and repairing of gaols.

THE juſtices, or the greater number of them, within the limits of their commiſſion, upon preſentment of the grand jury at the aſſizes (or ſeſſions, 12 *G.* 2. *c.* 29. *ſ.* 13.) of the inſufficiency or inconveniency of the county gaol, may contract with any perſon for the building, finiſhing, or repairing the ſame. 11 & 12 *W.* *c.* 19. *ſ.* 1, 2. The expence thereof to be paid by the treaſurer, out of the general county rate. 12 *G.* 2. *c.* 29.

But this ſhall not extend to gaols held by inheritance; nor to charge any perſons in any town or liberty which have common gaols for felons, and commiſſioners of aſſize or gaol delivery, for any aſſeſſment to the making the common gaol for the ſhire. 11 & 12 *W.* *c.* 19. *ſ.* 5.

II. Who

II. Who ſhall have the keeping of gaols.

The gaol it ſelf is the king's, but the keeping thereof is incident to the office of the ſheriff, and inſeparable from it; except ſuch gaols whereof any perſons have the keeping by inheritance or ſucceſſion. 14 *Ed.* 3. *ſt.* 1. *c.* 10. 19 *H.* 7. *c.* 10. 2 *Inſt.* 589.

And therefore the ſheriffs ſhall put in ſuch keepers for whom they will anſwer. 14 *Ed.* 3. *ſt.* 1. *c.* 10.

But by the 3 *G. c.* 15. *ſ.* 10. None ſhall buy the office of gaoler, on pain of 500*l.* half to the king, and half to him that ſhall ſue.

And a gaoler in fact, is as much puniſhable for a miſdemeanor in his office, as if he were a rightful gaoler. 2 *Haw.* 134.

III. Gaoler ſhall receive criminals.

All felons ſhall be impriſoned in the common gaol, and not elſewhere. 5 *H.* 4. *c.* 10.

And if the gaoler refuſes to receive a felon, or take any thing for receiving him, he ſhall be puniſhed for the ſame by the juſtices of gaol delivery. 4 *Ed.* 3. *c.* 10. *Dalt. c.* 170.

But vagrants and other criminals, offenders, and perſons charged with ſmall offences, may for ſuch offences, or for want of ſureties, be committed either to the common gaol, or houſe of correction, as the juſtices in their judgment ſhall think proper. 6 *G. c.* 19.

IV. How they ſhall be maintained.

The gaoler cannot refuſe the priſoner victuals, for he ought not to ſuffer him to die for want of ſuſtenance. 1 *Inſt.* 295.

Which ſhall be provided for, by a ſum to be paid out of the general county rate, by the high conſtables, to ſuch ſufficient perſons dwelling nigh the gaols, as ſhall be appointed by the juſtices in open ſeſſions, who ſhall be there ready to receive it. 14 *El. c.* 5. 12 *G.* 2. *c.* 29.

V. Spirituous liquors not to be ſold in gaols.

By the 24 *G.* 2. *c.* 40. No licence ſhall be granted for retailing ſpirituous liquors within any gaol or priſon; and if the gaoler ſhall ſell, lend, uſe, or give away, or ſuffer the ſame (except by way of medicine) he ſhall forfeit 100*l.* half to the king, and half with full coſts to him who ſhall ſue. *ſ.* 17.

And any juſtice, on information on oath, that ſpirituous liquors are kept or diſpoſed of in ſuch gaol, may enter and ſearch, or iſſue his warrant to ſearch for, and ſeize, and ſtave, and deſtroy the ſame. *ſ.* 18.

And if any perſon ſhall endeavour to bring any ſpirituous liquors into ſuch gaol, the gaoler or his ſervants may apprehend and

and carry him before a juſtice; and if by the oath of one witneſs or otherwiſe ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine, not exceeding 20 *l.* and not leſs than 10 *l.* as the juſtice ſhall impoſe, to be paid half to the informer, and half to the poor of ſuch gaol. *ſ.* 19.

And a copy of the three clauſes above, ſhall be hung up in each gaol, on pain of the gaoler forfeiting 40 *s.* to be levied by warrant of one juſtice, on conviction on the oath of one witneſs: and any juſtice may enter and demand a ſight of ſuch copy, and if not ſhewn to him, he ſhall immediately convict ſuch gaoler; one half of the ſaid penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of ſuch gaol. *ſ.* 20.

VI. How priſoners may be ſet on work.

The juſtices in their general ſeſſions, if they find it needful, may provide a ſtock of ſuch materials as they find convenient, for the ſetting poor priſoners on work, to be paid for by the treaſurer out of the general county rate; and may pay and provide fit perſons to overſee and ſet ſuch priſoners on work; and make ſuch orders for accounts concerning the premiſſes, as ſhall be thought needful, and for puniſhment of neglects and other abuſes, and for beſtowing the profits ariſing by the labour of the priſoners for their relief. Provided that the ſum to be ſo paid do not exceed the rate of 6 *d.* a week for any one pariſh. 19 *C.* 2. *c.* 4. *ſ.* 1. 12 *G.* 2. *c.* 29.

VII. How they ſhall be reſtrained and kept.

If any perſon ſhall be committed to any priſon, for any criminal or ſuppoſed criminal offence, he ſhall not be removed from thence, unleſs it be by *habeas corpus* or ſome other legal writ; or where he is removed from one priſon or place to another, within the ſame county, in order to his trial or diſcharge; or in caſe of ſudden fire or infection, or other neceſſity: on pain that the perſon ſigning any warrant for ſuch removal, and the perſon executing the ſame, ſhall forfeit for the firſt offence 100 *l.* and for the ſecond 200 *l.* to the party grieved. 31 *C.* 2. *c.* 2. *ſ.* 9.

But on emergent occaſions, as in caſe of infectious diſeaſes, the ſheriff or gaoler, with the advice and conſent of three or more juſtices (1 *Q.*) may, if they ſhall find it needful, provide other ſafe places (with the owners conſent) for the removal of ſick or other perſons out of the uſual gaols. 19 *C.* 2. *c.* 4. *ſ.* 2.

It ſeemeth generally in all caſes where a man is committed to priſon, eſpecially if it be for felony, or upon an execution, or but for a treſpaſs or other offence, every gaoler ought to keep ſuch priſoner in ſafe and cloſe cuſtody; ſafe, that he cannot eſcape: and cloſe, without conference with others or intelligence of things abroad. *Dalt. c.* 170.

And therefore if the gaoler ſhall licence his priſoner to go abroad for a time, and then to come again, or to go abroad with a keeper, tho' he come again, yet theſe are eſcapes. *Dalt. c.* 170.

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his eſcape. 1 *H. H.* 601. *Dalt. c.* 170.

But the learned editor of *Hale's Hiſtory* obſerves, that this liberty can only be intended, where the officer has juſt reaſon to fear an eſcape; as where the priſoner is unruly, or makes any attempt to that purpoſe; but otherwiſe, notwithſtanding the common practice of gaolers, it ſeems altogether unwarrantable, and contrary to the mildneſs and humanity of the laws of *England*, by which gaolers are forbidden to put their priſoners to any pain or torment. And Lord *Coke*, 2 *Inſt.* 381. is expreſs, that by the common law it might not be done. 1 *H. H.* 601.

And if the gaoler keep the priſoner more ſtraitly than he ought of right, whereof the priſoner dieth, this is felony in the gaoler by the common law: and this is the cauſe, that if a priſoner die in gaol, the coroner ought to ſit upon him. 3 *Inſt.* 91.

But if a criminal, endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. 1 *H. H.* 496.

VIII. How they ſhall be delivered.

By the 3 *H.* 7. *c.* 3. Thoſe that have the cuſtody of gaols, muſt certify the names of all priſoners, to the juſtices of gaol delivery, in order to their trial or diſcharge; on pain of 5 *l.*

And if a gaoler detains a priſoner in gaol after his acquittal, unleſs it be for his fees (not for meat, drink, or lodging) this is an unlawful impriſonment. 2 *Inſt.* 53.

And the gaoler muſt not diſobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the priſoner over, till the gaoler be paid all his fees. 2 *Haw.* 151.

IX. Of gaolers permitting eſcapes.

If the gaoler voluntarily ſuffer a priſoner to eſcape, he ſhall be puniſhed in the ſame manner as the priſoner ought to have been who eſcaped: and if he negligently permit him to eſcape, he ſhall be puniſhed by fine and impriſonment. And the ſheriff ſhall anſwer for him. 2 *Haw.* 134, 5, 6.

But the principal gaoler is only finable for the voluntary eſcape of a felon ſuffered by his deputy; for no one ſhall ſuffer capitally for any crime, but he who is actually guilty of it. 2 *Haw.* 135.

But for a negligent eſcape ſuffered by his bailiff, the ſheriff is as much liable to anſwer, as if he had actually ſuffered it himſelf; and the court may charge either the ſheriff or bailiff for it: and if a deputy gaoler be not ſufficient to anſwer a negligent eſcape, his principal muſt anſwer for him. 2 *Haw.* 135.

X. *Concerning debtors.*

By an act in the 22 & 23 *C.* 2. *c.* 20. certain regulations are made, in relation to poor priſoners for debt, which are inforced and inlarged, and (in effect) ſuperſeded, by the 2 *G.* 2. *c.* 22. and therefore the act of the 22 & 23 *C.* 2. is only mentioned here, becauſe if this latter act, which is but temporary, ſhall be permitted to expire, the ſaid regulations will fall back upon the aforeſaid ſtatute of *C.* 2.

Which ſaid act of the 2 *G.* 2. (which by the 21 *G.* 2. *c.* 33. is continued to *June* 1. 1754, &c.) enacteth as follows:

No ſheriff, bailiff, or other officer, ſhall carry any perſon being in his cuſtody by any writ, proceſs, or warrant, to any tavern, alehouſe, victualling houſe, or to the private houſe of ſuch officer, or of any of his relations or tenants, without his conſent; nor charge him for any wine, beer, ale, victual, tobacco, or any thing elſe, but what he ſhall freely call for; nor ſhall demand more than by law is allowed for ſuch arreſt, or waiting till the priſoner have given appearance or bail, or agreed with the party, or be ſent to gaol; nor take any thing for keeping him out of gaol; nor ſhall carry him to gaol within 24 hours after the arreſt; nor ſhall take more for a day's diet, or night's lodging, or other expences, than what ſhall be allowed by order of ſeſſions, who are to make ſtanding rules or orders for aſcertaining ſuch expences. *ſ.* 1.

(But by the 3 *G.* 2. *c.* 27. *ſ.* 6. which act hath the ſame continuance; If any perſon arreſted ſhall refuſe to be carried to ſome ſafe and convenient dwelling houſe of his own naming, ſo as it be in a market town (if he is there arreſted), or within three miles of the place of arreſt, not being his own houſe, nor out of the liberty, he may be carried to gaol within the 24 hours.)

And the ſheriff ſhall deliver a printed copy of the above clauſe to every bailiff; and when the bailiff ſhall give ſecurity upon his entring into his office; ſhall make it part of the condition of ſuch ſecurity, that he will ſhew and deliver a copy of the ſaid clauſe to every perſon whom he ſhall arreſt and carry to any ſuch houſe, and permit him to read the ſame before any liquor or meat ſhall be called for; on pain of being puniſhed as for a miſdemeanor. *ſ.* 2.

And the gaoler ſhall ſuffer any priſoner to ſend for any victuals or other neceſſaries, and to have ſuch bedding, linen, or other things, as he ſhall think fit. *ſ.* 3.

And the gaoler ſhall take no fees for commitment, chamber rent, or diſcharge, but what are now allowed by law, until ſuch fees ſhall be ſettled by the juſtices in ſeſſions. And tables ſhall be made of the fees when ſo ſettled, and ſhall be ſigned by three or more juſtices attending the ſettling, and ſhall be reviewed and confirmed or moderated, and then ſigned by the judges of aſſize, or one of them, together with three or more juſtices of the county. And alſo rules and orders for the better government of priſons, ſhall be made, and from time to time enlarged, inforced, or altered

altered as occaſion ſhall require, by the judges of aſſize or one of them, and three or more juſtices under their hands. And duplicates of ſuch tables of fees and rules, ſhall be inrolled by the clerk of the peace without fee, and ſhall be hung up and remain in every gaol.

And after ſuch table of fees ſettled and confirmed, no gaoler ſhall demand of any priſoner for debt, any greater fee than is therein allowed. (Regulations in *London*, *Middleſex*, and *Surrey*, to be made by the two chief juſtices, and chief baron, and the juſtices of the peace.) *ſ.* 4.

And on the petition of any priſoner complaining of any exaction or extortion, or other abuſe, by any gaoler or bailiff, to any of the judges or juſtices of aſſize, they may determine the ſame in a ſummary way, with full coſts. *ſ.* 5.

And the juſtices of the peace ſhall do their beſt endeavours, to diſcover charities given for the uſe of priſoners, and may ſend for writings, and examine perſons on oath, and order the ſame according to the intent of the donors: And liſts of ſuch charities ſhall be hung up in the gaol, and be regiſtred by the clerk of the peace. *ſ.* 6.

And if any ſheriff, bailiff, gaoler, or other officer, ſhall offend againſt this act, he ſhall (over and above the penalties by former laws) forfeit to the party grieved 50*l.* with treble coſts. *ſ.* 14.

The county gaol is the priſon for malefactors; but priſoners for debt, where eſcape lies againſt the ſheriff for their eſcaping, may be kept in what place the ſheriff pleaſes. L. *Raym.* 136.

But he ſhall not put, keep, or lodge priſoners for debt and felons together in one room or chamber; but they ſhall be put, kept, and lodged ſeparate and apart from one another in diſtinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. 22 & 23 *C.* 2. *c.* 20. *ſ.* 13.

But it is ſaid, that a gaoler is no way puniſhable for keeping a debtor in irons. 2 *Haw.* 152. But it ſeemeth that this muſt at leaſt be underſtood with the qualification abovementioned.

XI. Concerning the priſons of the king's bench *and* marſhalſea.

The juſtices in *Eaſter* ſeſſions ſhall ſet down what ſums ſhall be ſent out of every county or place corporate, for the relief of the poor priſoners of the *king's bench* and *marſhalſea*, ſo as there be ſent out of every county yearly 20*s.* at the leaſt to each of the ſaid priſons; to be paid by the high conſtables out of the general county rate, to two ſuch treaſurers, or one of them, as by the more part of the juſtices of the county ſhall be elected to be treaſurers: which treaſurers, on the firſt day of *Trinity* term yearly, ſhall pay over the ſame to the lord chief juſtice of *England*, and knight marſhal, or to whom they ſhall appoint, taking their acquittance for the ſame, or in default of the chief juſtice, to the next moſt antient juſtice of the *king's bench*, equally to be divided

divided between the priſoners of the *king's bench* and *marſhalſea* priſons. 43 *El.* *c.* 2. *ſ.* 12, 13, 14. 11 *G.* 2. *c.* 20. *ſ.* 1. 12 *G.* 2. *c.* 29.

And if the treaſurer ſhall neglect or refuſe, the king's bench may make a rule on him, requiring him to pay the ſame; and obedience to ſuch rule may be inforced as other rules of the ſaid court, at the coſt and charges of the treaſurer. 11 *G.* 2. *c.* 20. *ſ.* 2, 4.

And that the treaſurer may be the better amenable to the ſaid court, he ſhall within 30 days after his election or appointment, under the like penalty, tranſmit his name and place of abode to the clerk of the crown in the king's bench, to be entred by him; for which entry no fee ſhall be paid. *ſ.* 3.

Gauger. See Exciſe.

Gin. See Exciſe.

Glaſs. See Exciſe.

Good behaviour. See Surety.

Goſs. Burning of it in foreſts. See Burning.

Grand larceny. See Larceny.

Greyhound. See Game.

Gunpowder.

1. BY an act made in the 16 *C.* 1. *c.* 21. (to wit, in 1640, being the laſt ſtatute of force in that king's reign) All ſubjects may make and ſell gunpowder, and bring into the kingdom ſalt petre, brimſtone, or any other materials for the making of it. Who may make gunpowder.

And by a ſtatute made in the firſt year of the reign of king *James* the 2d, (which is alſo ſomewhat remarkable) it is enacted, that if any perſon ſhall obtain a grant for the ſole making or importing of gunpowder, he ſhall incur a *præmunire*. 1 J. 2. c. 8. *ſ.* 3.

2. By the 5 *G.* 2. *c.* 20. No maſter of any veſſel outward bound, ſhall receive on board any gunpowder, either as merchandize or ſtore for the voyage (except for his majeſty's ſervice) on the *Thames* above *Blackwall*; on pain of 5 *l.* for every 50 *lb.* weight, and ſo in proportion. *ſ.* 2. Shipping or landing of gunpowder, or firing of guns on the Thames above Blackwall.

And the maſter of every veſſel coming into the *Thames*, ſhall land all the powder on board, either before arrival at *Blackwall*, or within 24 hours (if the weather will permit) after he comes to anchor there, or at the place of unloading; on pain of 5 *l.* for every 100 *lb.* weight. *ſ.* 3.

And

And if any officer of any ſhip (except the king's) ſhall, between *London bridge* and *Blackwall*, keep any gun loaded with ball, or fire any gun on board above *Blackwall*, before ſunriſing or after ſunſetting; he ſhall forfeit for ſuch gun loaded 5 *s.* and for ſuch gun fired 10 *s.* *ſ.* 4.

And the corporation of *Trinity houſe* at *Deptford ſtrond*, may appoint a perſon to inſpect veſſels; and if any ſuch officer obſtruct him, he ſhall forfeit 5 *l.* *ſ.* 5.

And the ſaid penalties ſhall go to the poor of the corporation. *ſ.* 6.

And two juſtices of *London*, or the reſpective counties where the offence ſhall be committed, ſhall on complaint in ten days ſummon the offender, or after oath made of the offence may iſſue their warrant for apprehending him, and on appearance or contempt may convict him either by oath of witneſſes, or confeſſion, or his own view, and levy the penalty by diſtreſs, and if not redeemed in five days, by ſale; for want of diſtreſs, he ſhall be impriſoned for three months, or till paid: and perſons aggrieved may appeal to the next ſeſſions. *ſ.* 7.

Keeping gunpowder in London.

3. No perſon, not being a dealer in gunpowder, ſhall keep more than 50 *lb.* or being a dealer, not more than 200 *lb.* longer than 24 hours, at any time in any houſe or place, or in any houſes or other places, either under the ſame roof, or by dividing the ſame, and diſpoſing thereof under different roofs, or in any yard or yards, within *London* and *Weſtminſter*, or the ſuburbs thereof, or within three miles of the tower, or of St. *James*'s; or within two miles of any magazine now erected (that is, in the year 1718,) for keeping gunpowder, belonging to the king for the uſe of the publick; or on the *Thames*, except in veſſels paſſing or detained by tides or bad weather (except carts and other carriages loading or unloading, or paſſing on the highway:) on pain of forfeiting the ſame, and the value thereof, with full coſts, to him who ſhall ſue in any court of record at *Weſtminſter* in 30 days. 5 *G.* *c.* 26. *ſ.* 1. 11 *G.* *c.* 23. *ſ.* 1. 15 & 16 *G.* 2. *c.* 32. *ſ.* 1.

And any juſtice of the peace within the ſaid limits, on demand by any inhabitants ſhewing a reaſonable cauſe, may iſſue his warrant to ſearch in the day time, for dangerous quantities of gunpowder, and break open any places if there be occaſion, and the ſearchers may ſeize, and may remove the ſame in 12 hours out of the ſaid limits, and detain the ſame till it be determined in the courts whether it be forfeited or not. 15 & 16 *G.* 2. *c.* 32. *ſ.* 2.

Perſons permitting others to keep it.

4. And perſons permitting others to keep gunpowder, in any places not belonging to the owners of ſuch gunpowder, ſhall forfeit 1 *s.* a pound. 15 & 16 *G.* 2. *c.* 32. *ſ.* 3.

Carrying gunpowder in the ſtreets of London.

5. No perſon ſhall carry in the ſtreets of *London* or *Weſtminſter*, or the ſuburbs thereof, more than 20 hundred weight of gunpowder at one time; and all gunpowder carried in the ſaid ſtreets in any carts or carriages, ſhall be carried in covered carts or carriages, and the barrels cloſe jointed and hooped, and put into caſes of leather or canvaſs; and gunpowder carried by man or horſe, ſhall be put into caſes of leather or canvaſs, and entirely covered therewith:

with: and if any ſhall be carried otherwiſe, it ſhall be forfeited, and may be ſeized by any perſon to his own uſe, the offender being thereof convicted before two juſtices. 5 *G.* *c.* 26. *ſ.* 4.

Keeping gunpowder elſewhere.

6. By the 22 *G.* 2. *c.* 38. No perſon ſhall keep gunpowder for more than 24 hours at any one time, in greater quantity than 400 *lb.* weight, in any houſe or other place, in any city or the ſuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any the king's magazines; nor ſhall keep for more than 24 hours at any time, a greater quantity than 3000 *lb.* weight in any houſe or other place. 22 *G.* 2. *c.* 38. *ſ.* 1.

And any two juſtices, on demand made, and a reaſonable cauſe aſſigned, by any pariſh officer or two houſeholders inhabiting where it is kept, ſhall iſſue their warrant for ſearching in the day time any houſe, ſhop, or other place, and breaking open the doors thereof, if there be occaſion; and if upon ſuch ſearch, more than 400 *lb.* weight, or 3000 *lb.* weight reſpectively as above ſhall be found, all exceeding the ſaid quantities ſhall be ſeized, and detained, and forfeited to any perſon who ſhall ſue in three months in any court at *Weſtminſter*; which court ſhall give judgment for recovery of the ſame or the value thereof with full coſts. *ſ.* 2.

But no penalty ſhall be incurred on account of a greater quantity than 30 hundred weight kept within any warehouſe or magazine already built for that purpoſe (that is, in 1749,) unleſs the juſtices at their quarter ſeſſions ſhall on complaint by two inhabitants near, adjudge the ſame to be dangerous, and until ſix months after ſuch adjudication; and provided the ſame be not ſituate in any city or the ſuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any of the king's magazines. *ſ.* 7.

Erecting powder mills, a nuſance.

7. And it ſeems that erecting powder mills, or keeping powder magazines near a town, is a nuſance, for which an indictment or information will lie. For in the caſe of *K.* and *Williams*, *E.* 12 *W.* there was an indictment againſt *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K.* and *Taylor*, *T.* 15 *G.* 2. The court granted an information againſt the defendant as for a nuſance, on affidavits of his keeping great quantities of gunpowder near *Malden* in *Surrey*, to the endangering the church and houſes where he lived. *Str.* 1167. It might as well have been ſaid, to the endangering the lives of his majeſty's ſubjects.

Carrying gunpowder elſewhere than in London.

8. No perſon ſhall convey at any one time, in any waggon or other carriage, a greater quantity than 2500 pounds weight; or more than 5000 pounds weight in any open veſſel on any river, within one mile of any city or market town: And all ſuch gunpowder ſhall be carried in covered carts and carriages; and the barrels ſhall be cloſe joined and hooped, and ſecured that no part thereof be ſcattered in the paſſage; on pain of being ſeized and forfeited to the informer, on proof of the offence before two juſtices. 22 *G.* 2. *c.* 38. *ſ.* 3.

Exception.

9. But none of the ſaid acts ſhall extend to any magazine belonging to the crown; or to hinder the trying of gunpowder by

his majeſty's officers; or to the carrying of gunpowder to and from the king's magazines; or with forces in their march. 5 G. c. 26. ſ. 5. 11 G. c. 23. ſ. 4. 15 & 16 G. 2. c. 32. ſ. 6. 22 G. 2. c. 38. ſ. 5.

Seſſions to appoint places for warehouſes.

10. The juſtices in ſeſſions ſhall, on application to them made, appoint convenient plots of ground, two miles diſtant from any city or market town, not exceeding two acres, with the uſe of convenient roads leading thereto, for erecting warehouſes for keeping gunpowder in any quantity, firſt agreeing with the proprietor; and if they cannot agree, the ſaid juſtices ſhall iſſue their warrant to the ſheriff to impanel and return a jury, who ſhall on oath (to be adminiſtred by the ſaid juſtices) inquire into the value of the ground, with the uſe of convenient roads leading thereto: And all ſuch verdicts and inquiſitions ſhall be kept with the records of the ſeſſions, and be concluſive to all parties: And the ſaid juſtices may ſend for perſons intereſted, and examine the parties and witneſſes on oath: And the ſum to be aſſeſſed as aforeſaid, not exceeding 30 years purchaſe, ſhall be paid to the proprietor; and on ſuch payment, or in caſe of refuſal to accept it, on leaving it with the ſaid juſtices for the proprietor, the inheritance of the grounds, and uſe of the roads leading thereto, ſhall be veſted in the purchaſers and their aſſigns, for the purpoſes aforeſaid, and not otherwiſe; And the warehouſes to be built thereon, ſhall be built in ſuch manner, as will moſt effectually render them ſafe and ſecure. 22 G. 2. c. 38. ſ. 6.

Working with hammers in warehouſes.

11. If any perſon ſhall work with any iron hammer, or hammer plated with iron or ſteel, in any warehouſe or place while any gunpowder is there; he ſhall on conviction within one month, by the oath of one witneſs, before one juſtice, forfeit 20 s. to the informer; to be levied by diſtreſs by warrant of ſuch juſtice; for want of ſufficient diſtreſs, to be committed to the houſe of correction, to be kept to hard labour not exceeding one month, nor leſs than 14 days. 11 G. c. 23. ſ. 3.

Doing any thing to indanger the firing it.

12. Every perſon employed in any ſtorehouſe where gunpowder is kept, or in carrying gunpowder from one place to another, being convicted before one juſtice, of wilfully committing any act, whereby ſuch gunpowder may be in danger of taking fire, ſhall forfeit 5 l. to the informer, for every 100 pounds weight of gunpowder contained in ſuch ſtorehouſe, or which he ſhall be employed in conveying; and on non-payment thereof, ſhall be committed to the publick gaol, without bail, not exceeding ſix months. 22 G. 2. c. 38. ſ. 4.

Guns. See Game.

Habeas corpus. See Bail.

Hackney coaches and chairs.

For the duty on coaches, see title Excise.

1. THE king may appoint persons not exceeding five, to be commissioners for regulating hackney coaches within the bills of mortality. 9 *An.* *c.* 23. *s.* 1. Commissioners.

2. Which commissioners shall under hand and seal license hackney coaches within the bills, not exceeding 800; and on every licence shall be reserved 5 *s.* a week, to be paid monthly. 9 *An.* *c.* 23. *s.* 2. Licensing.

And they shall also license hackney chairs within the bills aforesaid, not exceeding 400; reserving a rent of 10 *s.* a year, to be paid quarterly. 9 *An.* *c.* 23. *s.* 3. 10 *An.* *c.* 19. *s.* 158. 12 *G.* *c.* 12. *s.* 15.

3. Every coach and chair shall have a distinct mark on each side; and if any shall alter such mark, he shall forfeit 5 *l.* half to the informer, and half to the king. 9 *An.* *c.* 23. *s.* 4. Mark.

4. No horse to be used with any hackney coach, shall be under 14 hands high. 9 *An.* *c.* 23. *s.* 4. Size of the horses.

5. No person shall drive or let to hire any hackney coach without licence; on pain of 5 *l.* nor shall carry any person for hire in a hackney chair, without licence; on pain of 40 *s.* in like manner. 9 *An.* *c.* 23. *s.* 4. Penalty of driving without licence.

And by the 1 *G.* *st.* 2. *c.* 57. No unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the bills aforesaid, on pain of 5 *l.* as for driving unlicensed. *s.* 3.

And if any person shall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the master or some of his family; on information given to the commissioners, they may summon the driver, and unless he prove an order from the master to attend at the funeral, the driver or the undertaker shall forfeit 5 *l.* *s.* 4.

6. And the coachman shall not take above the rate of 10 *s.* a day, reckoning 12 hours to the day; and by the hour, not above 18 *d.* for the first hour, and 12 *d.* for every hour after: And no person shall pay from any of the inns of court or thereabouts to any part of St. *James*'s or the city of *Westminster* (except beyond *Tuttle-street*) above 12 *d.* and the same prices from the same places to the inns of court or thereabouts; and from the inns of court or thereabouts, to the *Royal Exchange* 12 *d.* and if to the *Tower*, or *Bishopgate-street*, or *Aldgate*, or thereabouts 18 *d.* and so from the said places to the said inns of court as aforesaid: and the like rates from and to any place, at the like distance, within the places beforementioned. 9 *An.* *c.* 23. *s.* 6. Rates.

And no person shall be obliged to pay above 12 *d.* for a coach for any distance (not above specified) not exceeding one mile and

four furlongs; nor above 1 *s.* 6 *d.* for any diſtance above a mile and four furlongs, and not exceeding two miles: And no chairman ſhall take more than the rate for any hackney coach driven two thirds of the ſame diſtance; on pain of 40 *s.* *ſ.* 7, 8.

By-laws. 7. And the commiſſioners may make by-laws, to bind all perſons licenſed, and the renters of ſuch licences, and the drivers. 9 *An.* *c.* 23. *ſ.* 16. 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 1.

The ſame to be approved by the lord chancellor, commiſſioners of the great ſeal, two chief juſtices, and chief baron, or three of them. 9 *An.* *c.* 23. *ſ.* 17.

Driver exacting. 8. And if any hackney coachman ſhall refuſe to go at, or exact more for his hire, than according to the above act, or by-laws; he ſhall forfeit a ſum not exceeding 3 *l.* nor under 10 *s.* 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 2.

Miſbehaving. 9. And if any perſon who ſhall drive a coach, or carry a chair for hire, acting under a perſon licenſed, ſhall be guilty of miſbehaviour, by demanding more than his fare, or giving abuſive language, or other rude behaviour; he ſhall, on conviction on oath, forfeit not exceeding 20 *s.* to the poor; and if he ſhall not be able, or refuſe to pay, he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour ſeven days, and receive the publick correction of the houſe before he be diſcharged. 9 *An.* *c.* 23. *ſ.* 49.

And on miſbehaviour of a coachman by abuſive language, or otherwiſe, the commiſſioners may revoke his licence. *ſ.* 19.

Perſon refuſing to pay. 10. And if any perſon ſhall refuſe to pay, or ſhall deface any coach or chair, any juſtice may grant his warrant to bring him before him; and on proof upon oath may award ſatisfaction to the party, and on refuſal to pay, may bind him over to the next ſeſſions, who may determine the ſame. 9 *An.* *c.* 23. *ſ.* 22.

Power of the juſtices. 11. The rents and penalties to be levied by diſtreſs, by warrant of three commiſſioners; which diſtreſs ſhall be ſold in ten days, returning the overplus, charges of the diſtreſs and of the warrant being firſt deducted (if on ſeven days notice they pay not the fine without ſuch warrant); and in default of diſtreſs, to be impriſoned till paid: and if any rent ſhall be unpaid for 14 days, the commiſſioners may withdraw the licence. 9 *An.* *c.* 23. *ſ.* 12.

And moreover, the breach of the by-laws, and of theſe rules and orders, may be puniſhed by any juſtice of the peace, mayor, or bailiff, where the offence ſhall be committed, in like manner as by the commiſſioners. 9 *An.* *c.* 23. *ſ.* 17. 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 7.

Note; The clauſe in the act of the 12 *G.* *c.* 12. abovementioned, was only to continue for 18 years; but by the 16 *G.* 2. *c.* 26. it is continued to *June* 24, 1760, *&c.*

In which ſaid act of the 16 *G.* 2. there ſeems to be a miſtake, which hath unſettled all the other acts abovementioned. For whereas the 9 *An.* *c.* 23. ſo far as it relates to this ſubject, was to continue for 32 years, and afterwards by the 3 *G.* *c.* 7. *ſ.* 1. was made perpetual; and the ſaid act of the 10 *An.* *c.* 19. ſo far as it relates to this ſubject, was to continue for 31 years, and afterwards by the ſaid act of the 3 *G.* *c.* 7. *ſ.* 1. was alſo made perpetual;

and the ſaid act of the 1 G. *ſt.* 2. *c.* 57. which explains and amends the 9 *An. c.* 23. doth conſequently attend the fate of the ſame act of the 9 *An.* Now this act of the 16 G. 2. recites them all three as temporary only, and continues them along with the ſaid act of the 12 G. to *June* 24. 1760, *&c.* By which it may ſeem, that they will expire at that time, if they ſhall not be farther continued; or if that miſtake ſhall not in the mean time be rectified.

Hares. See Game.
Harepipes. See Game.
Harveſt. See Game.

Hawkers and pedlars.

1. THERE ſhall be paid by every hawker, pedlar, petty chapman, or any other trading perſon going from town to town, or to other mens houſes, and travelling either on foot, or with horſe, horſes, or otherwiſe (except as herein after excepted), carrying to ſell, or expoſing to ſale any goods, wares, or merchandizes, a duty of 4 *l.* a year. And every perſon ſo travelling with a horſe, aſs, mule, or other beaſt bearing or drawing burden, ſhall pay 4 *l.* a year for each horſe or beaſt, over and above the other 4 *l.* 9 & 10 *W. c.* 27. *ſ.* 1. Licence duty.

2. And every ſuch perſon, on receiving his licence, ſhall pay to whom the commiſſioners of the treaſury, or three of them, ſhall appoint for licenſers, or their deputy, half the duty, and give ſecurity by bond, with one or more ſureties, to the king, for payment of the other half at the end of ſix kalendar months, unleſs he ſhall chuſe to pay down the other half, in which caſe he ſhall be allowed after 2 *s.* in the pound for prompt payment. 9 & 10 *W. c.* 27. *ſ.* 2. Payment of the duty.

3. And the commiſſioners for theſe duties, or two of them, ſhall (on the receipt and ſecurity given as aforeſaid) grant licences to be by them ſubſcribed; for which ſhall be taken only 1 *s.* unleſs ſuch perſon travel with a horſe or beaſt, and in that caſe ſhall be paid only 2 *s.* above the duties. 9 & 10 *W. c.* 27. *ſ.* 4. Granting the licence.

4. And if any ſuch perſon be found trading as aforeſaid, without, or contrary to ſuch licence; or if on demand made by any juſtice of the peace, mayor, conſtable, or other peace officer of any town corporate or borough, where he ſhall ſo trade, ſhall not have his licence ready to be produced; *he ſhall forfeit* 12 *l.* half to the informer, and half to the poor of the pariſh wherein the offender ſhall be diſcovered; and for nonpayment thereof, ſhall ſuffer as a common vagrant, and be committed to the houſe of correction. 9 & 10 *W. c.* 27. *ſ.* 3. 3 & 4 *An. c.* 4. *ſ.* 4. Trading without a licence, or refuſing to ſhew it.

He ſhall forfeit 12 *l.*] *M.* 5 G. *K.* and *Beck.* Although the ſtatute here mentions nothing of *conviction*, yet nevertheleſs there ought to be a formal conviction; and a *certiorari* will lie for the removal of it. *Str.* 127.

And if any conſtable or other officer aforeſaid, ſhall refuſe or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witneſs before one juſtice where the offence ſhall be committed; he ſhall forfeit 40 *s.* by diſtreſs and ſale by warrant of ſuch juſtice, half to the poor, and half to the proſecutor. 9 & 10 *W.* *c.* 27. *ſ.* 7.

And any perſon may ſeize and detain any ſuch hawker, pedlar, petty chapman, or other trading perſon, till he produce his licence if he have any, or if he be found trading without a licence, for ſuch reaſonable time as he may give notice to the conſtable, churchwarden, overſeer, or ſome other pariſh officer, who ſhall carry ſuch perſon ſo ſeized before a juſtice; who ſhall, either on confeſſion, on proof by witneſs upon oath, convict the offender, and by his warrant cauſe the ſum of 12 *l.* to be forthwith levied by diſtreſs and ſale of the offender's goods, wares, or merchandizes. 9 & 10 *W.* *c.* 27. *ſ.* 8.

Lending licences. 5. If any perſon ſhall lend or let out to hire his licence, he and alſo the perſon trading under colour thereof, ſhall forfeit each 40 *l.* half to the king, and half to him that ſhall ſue in any court of record. 3 & 4 *An.* *c.* 4. *ſ.* 4.

Counterfeiting licences. 6. If any perſon ſhall forge or counterfeit, or travel with a forged or counterfeited licence; he ſhall forfeit 50 *l.* half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*, and ſhall alſo be liable to be puniſhed for forgery. 9 & 10 *W.* *c.* 27. *ſ.* 5.

Exceptions. 7. But nothing herein ſhall prohibit any perſon from ſelling acts of parliament, forms of prayer, proclamations, gazettes, licenſed almanacks, or other printed papers licenſed by authority; or any fiſh, fruits, or victuals; nor to hinder any perſon who is the real worker or maker of any goods or wares, or his children, apprentices, ſervants, or agents, from carrying abroad, expoſing to ſale, or ſelling any of the ſaid goods and wares of his own making, in any publick fair, market, or elſewhere; nor any tinker, cooper, glazier, plummer, harneſs mender, or other perſon uſually trading in mending kettles, tubs, houſhold goods, or harneſs, from going about and carrying with him proper materials for mending the ſame. 9 & 10 *W.* *c.* 27. *ſ.* 9.

Alſo perſons trading in the woollen and linen manufactures, and ſelling the ſame by wholeſale, ſhall not be deemed hawkers, pedlars, or petty chapmen. 3 & 4 *An.* *c.* 4. *ſ.* 14.

Alſo no maker or wholeſale trader in *Engliſh* bone lace, ſhall be deemed a hawker, pedlar, or petty chapman. 4 *G.* *c.* 6.

Alſo nothing herein ſhall extend to hinder any perſon from ſelling any goods in any publick fair or market. 9 & 10 *W.* *c.* 27. *ſ.* 12.

And nothing herein ſhall give any power for the licenſing of ſuch perſons to ſell any goods in cities, boroughs, towns corporate, or market towns, otherwiſe than they might have done before. 9 & 10 *W.* *c.* 27. *ſ.* 15.

Treble coſts. 8. Perſons ſued for any thing done herein, may plead the general iſſue, and have treble coſts. 9 & 10 *W.* *c.* 27. *ſ.* 6.

Hawks and hawking. See Game.

Hay.

THE 2 *W. Seſſ.* 2. *c.* 8. and 8 & 9 *W. c.* 17. do contain regulations concerning the ſelling of hay within the bills of mortality, which are not general enough to be here inſerted at large.

Hays. See Game.
Heath. See Game.
Hedge breaking. See Wood.

Hemp.

IT ſhall not be lawful to any perſon to water any hemp or flax, in any river, running water, ſtream, brook, or other common pond, where beaſts uſed to be watered; on pain that every perſon offending ſhall forfeit 20 *s.* half to the king, and half to the party grieved, or any other who ſhall ſue in any court of record, leet, or law day. 33 *H.* 8. *c.* 17.

Herring fiſhery.

IF any perſon ſhall damnify or deſtroy, without conſent of the ſociety, any of the nets, ſails, cordage, ſtores, or other materials, belonging to the ſaid ſociety; he ſhall, on conviction on the oath of one witneſs before one juſtice, forfeit to the ſociety treble value, by diſtreſs; and for want of ſufficient diſtreſs, to be committed to the houſe of correction to hard labour for any time not exceeding three months, or till ſatisfaction be made. Proſecution to be in ſix kalendar months. 28 *G.* 2. *c.* 14. *ſ.* 9.

Hides and Skins. See Leather.
High conſtable. See Conſtable.
High treaſon. See Treaſon.

Highways.

NOTE; Bridges repaired by the parish or townſhip, and which conſequently come under the cognizance of the ſurveyor of the highways, are comprehended under this title: County bridges are treated of under title **Bridges**.

For the ordering of ſtreets in cities and market towns, ſee title **Scavengers**.

Moſt of the books are remarkably confuſed under this title; occaſioned by a multiplicity of ſtatutes, ſtanding unrepealed, and yet altered perhaps five or ſix times, or oftner, by ſucceeding ſtatutes. In order to extricate the ſubject out of which perplexity, I have endeavoured to make the heads of this title leſs general, ſelecting the law relating to each diſtinct article by it ſelf.

But before I deſcend to particulars, it is proper to premiſe a clauſe in the ſtatute of the 24 *G.* 2. *c.* 43. which makes a great alteration in the whole law relating to this title; and is as follows:

Whereas ſeveral acts have been made, as well for repairing and amending divers publick roads, as for puniſhing offences done or committed upon or to the highways, the good intentions whereof have not been anſwered, for want of due execution of the ſaid laws; for remedy, and as a further encouragement to informers, All penalties and forfeitures impoſed by this or any former act, ſhall be wholly given to, and veſted in the informer or perſon who ſhall ſue for the ſame, who may ſue for and recover the ſame in the ſame manner as they are directed to be ſued for and recovered by the ſaid ſtatutes reſpectively; or otherwiſe by action at law, in any of the courts of record at *Weſtminſter*, in manner following, *viz.* Where any perſon ſhall be liable to a pecuniary penalty, the ſame may be ſued for by action of debt, in which it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of ——— being forfeited by an act intitled ———. And where the forfeiture is of any horſe, or other goods, by an action of trover, in which the value of ſuch horſe or other goods liable to the forfeiture ſhall be given in damages, without any ſeizure or demand thereof: And the plaintiff, if he recovers, ſhall have double coſts. Provided, there ſhall not be more than one recovery for the ſame offence; and that no action be brought by virtue of this act, in any of the ſaid courts, unleſs it be brought before the end of ſix calendar months after the offence committed. *ſ.* 11.

This being premiſed, I ſhall reduce the other laws concerning highways, under the following heads:

I What is a highway.
II. Concerning the ſpecial ſeſſions for the highways.
III. Appointment of the ſurveyor.

IV. Surveyor's

IV. Surveyor's general duty on acceptance of his office.
V. Who ſhall repair.
VI. The proportion of labourers and carriages.
VII. Providing materials.
VIII. Concerning the ſix days work.
IX. Of annoyances in general.
X. Ditches adjoining to the highway.
XI. Water in the highway.
XII. Hedges adjoining to the highway.
XIII. Wood growing in the highway.
XIV. Straw, dung, ſtones, timber, laid in the highway.
XV. Gate erected acroſs the highway.
XVI. Nuſance by an unlawful number of horſes or beaſts in carriages.
XVII. Nuſance by unlawful breadth and tire of wheels.
XVIII. Nuſance of riding upon carriages, or the drivers otherwiſe misbehaving.
XIX. Pulling up blocks in the highway.
XX. Concerning guide poſts.
XXI. Breadth and widening of highways.
XXII. Lands given to repairing highways.
XXIII. Aſſeſſment for the repair of highways.
XXIV. In what caſe the whole pariſh ſhall be contributory.
XXV. Further proviſion for the ſame by the common law.
XXVI. Preſentment or indictment of the highways in general.
XXVII. Preſentment by a juſtice on his own view.
XXVIII. Power of the leet to puniſh offences.
XXIX. Fines and the diſpoſal thereof.
XXX. Surveyor's account.
XXXI. Appeal.
XXXII. Certiorari.
XXXIII. Turnpikes.

I. What

Highways.

I. What is a highway.

Three kinds of highways.

1. There are three kinds of ways; 1. A foot way. 2. A foot and horſe way, which is alſo a pack or drift way. 3. A foot, horſe, and cart way. 1 *Inſt.* 56.

Difference between a highway and a private way.

2. It ſeemeth that any one of the ſaid ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is alſo a thoroughfare to other towns, may properly be called a highway. And therefore the diſtinction which is taken in ſome books, concerning this matter, ſeems to be very reaſonable; that every way from town to town may be called a highway, becauſe it is common to all the king's ſubjects; and conſequently that a nuſance therein is a common nuſance, and puniſhable by indictment: but that a way to a pariſh church, or to the common fields of a town, or to a private houſe, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of ſuch pariſh, houſe, or village only, may be called a private way, but not a highway, becauſe it belongeth not to all the king's ſubjects, but only to ſome particular perſons, each of which, as it ſeems, may have an action on the caſe for a nuſance therein. 1 *Haw.* 201.

How far outlets are part of the highway.

3. It hath been holden, that if there be an highway in an open field, and the people have uſed time out of mind, when the ways are bad, to go by outlets on the land adjoining, ſuch outlets are parcel of the way; for the king's ſubjects ought to have a good paſſage, and the good paſſage is the way, and not only the beaten track; from whence it follows, that if ſuch outlets be ſown with corn, and the beaten track be foundrous, the king's ſubjects may juſtify going upon the corn. 1 *Haw.* 201.

How far a river may be an highway.

4. In books of the beſt authority, a river common to all men is called an highway. 1 *Haw.* 201.

Highway changed.

5. It ſeemeth to be agreed, that an ancient highway cannot be changed, without the king's licence firſt obtained upon a writ of *ad quod damnum*, and an inquiſition thereon found, that ſuch a change will not be prejudicial to the publick; and it is ſaid, that if one change a highway without ſuch authority, he may ſtop the new way whenever he pleaſes; and it ſeemeth, that the king's ſubjects have not ſuch an intereſt in ſuch new way, as will make good a general juſtification of their going in it as a common highway, but that in an action of treſpaſs brought by the owner of the land, againſt thoſe who ſhall go over it, they ought to ſhew ſpecially, by way of excuſe, how the old way was obſtructed, and the new one ſet out; alſo it is ſaid, that the inhabitants are not bound to keep watch in ſuch a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw.* 201.

But by the 8 & 9 *W.* *c.* 16. Where any highway ſhall be incloſed, after a writ of *ad quod damnum* iſſued, and inquiſition thereupon taken, any perſon aggrieved by ſuch incloſure may complain thereof by appeal to the next quarter ſeſſions, whoſe determination

termination ſhall be final; and if no appeal be made, the inquiſition and return, entred and recorded by the clerk of the peace at the quarter ſeſſions, ſhall be binding to all perſons. *ſ.* 6.

However it is certain, that a highway may be changed by the act of god; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its courſe, and goes over different ground from that whereon it uſed to run, yet the highway continues in the new channel, in the ſame manner as in the old. 1 *Haw.* 202.

To whom the freehold of an highway belongeth.

6. The freehold of the highways is in him that hath the freehold of the ſoil; but the free paſſage is for all the king's liege people. 2 *Inſt.* 705.

H. 8 *G.* 2. Sir *John Lade* againſt *Shepherd.* Upon trial of an action of treſpaſs, a caſe was made; that the place where the ſuppoſed treſpaſs was committed, was formerly the property of the plaintiff, who ſome years ſince built a ſtreet upon it, which has ever ſince been uſed as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof reſted on the highway. And it was inſiſted for the defendant, that by plaintiff's making it a ſtreet, it was a dedication of it to the publick; and therefore however he might be liable to an indictment for a nuſance, yet the plaintiff could not ſue him as for a treſpaſs on his private property. But by the court; It is certainly a dedication to the publick, ſo far as the publick has occaſion for it, which is only for a right of paſſage: but it never was underſtood to be a transfer of the abſolute property in the ſoil. So the plaintiff had judgment. *Str.* 1004.

II. Concerning the ſpecial ſeſſions for the highways.

Special ſeſſions.

1. The juſtices, in their reſpective diviſions, ſhall once in four months (on pain of 5 *l.*) hold a ſpecial ſeſſions for the highways, and ſhall thereunto ſummon all the ſurveyors, and give them a charge, and declare unto them their duty. 3 *W.* *c.* 12. *ſ.* 9, 11.

2. And one of the ſaid ſeſſions ſhall be holden on *Jan.* 3. yearly, or within 15 days after. 3 *W.* *c.* 12. *ſ.* 3.

III. Appointment of the ſurveyors.

Surveyors appointed.

1. On *Dec.* 26. yearly, unleſs it be *Sunday*, and then on the 27th, the conſtable, churchwardens, ſurveyors of the highways, and inhabitants in every pariſh, ſhall aſſemble, and the major part of them ſhall make a liſt of the names of a competent number of the inhabitants in their pariſh, who have an eſtate in lands, tenements, or hereditaments in their own or their wives right, of 10 *l.* a year, or a perſonal eſtate of the value of 100 *l.* or are occupiers or tenants of houſes, lands, tenements, or hereditaments, of 30 *l.* a year, if any ſuch there be, or if there be no ſuch perſons in the pariſh, then the ſaid liſt to be of the moſt ſufficient inhabitants. 3 *W.* *c.* 12. *ſ.* 3.

2. And ſhall return ſuch liſt to the ſpecial ſeſſions to be held for that purpoſe within the diviſion, on *Jan.* 3. or within 15 days after;

after; of the time and place of which ſeſſions ſo to be holden, the ſaid juſtices ſhall give notice (A) to the conſtables, churchwardens, and ſurveyors, at leaſt ten days before. 3 *W.* *c.* 12. *ſ.* 3.

3. And if the conſtables, churchwardens, and ſurveyors ſhall not return ſuch liſt, every of them making default ſhall forfeit 20*s.* by diſtreſs, by warrant of two of the ſaid juſtices, or in default thereof, of any neighbouring juſtices. 3 *W.* *c.* 12. *ſ.* 4.

4. And the ſaid juſtices ſhall then and there, out of the ſaid liſts, according to their diſcretion, and the largeneſs of the pariſh, by warrant under their hands and ſeals (B), nominate and appoint one, two or more, as they ſhall think fit and approve of, to be ſurveyor or ſurveyors of the highways of every pariſh or town within the diviſion for the year enſuing. 3 *W.* *c.* 12. *ſ.* 3.

5. Which nomination and appointment ſhall by the conſtables or ſurveyors be notified to the perſon ſo nominated, within ſix days after ſuch nomination, by ſerving him with the ſaid warrant, or by leaving the ſame, or a true copy thereof, at his houſe or uſual place of abode; and from thenceforth he ſhall be ſurveyor. 3 *W.* *c.* 12. *ſ.* 3.

6. If he ſhall not take upon him, and execute the office, he ſhall forfeit 5 *l.* in like manner. 3 *W.* *c.* 12. *ſ.* 3.

7. And in caſe of ſuch neglect or refuſal, the ſaid juſtices ſhall appoint others in like manner, who ſhall execute the office, on the like penalty. 3 *W.* *c.* 12. *ſ.* 3.

IV. Surveyor's general duty on acceptance of his office.

Receiving the former ſurveyor's account.

1. He ſhall receive what money remained in his predeceſſor's hands. 3 *W.* *c.* 12. *ſ.* 9.

Making a ſurvey of the roads.

1. He ſhall within 14 days after acceptance of his office, and ſo from time to time every four months, or oftner, if required thereunto by warrant of two juſtices, view all the roads, common highways, bridges, cauſeways, pavements, hedges, ditches, and watercourſes appertaining to ſuch highways, together with all nuſances, or incroachments thereupon, and give a particular and true account in writing upon oath, of the ſtate and condition of all ſuch highways, and more eſpecially of ſuch faults and defects as want to be repaired, and of the neglects of labourers, to the next ſpecial ſeſſions, to the end that the ſaid accounts may be carefully preſerved, and that at all future ſeſſions the juſtices of the diviſion may have full information of, and may be able to examine into the particular ſtate and condition thereof: And if he ſhall neglect to give ſuch account, he ſhall forfeit 5 *l.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices. 1 *G.* *ſt.* 2. *c.* 52. *ſ.* 2.

For which oath no fee ſhall be taken. *ſ.* 11.

Penalty for neglect of duty.

3. And there is a general penalty of 40*s.* laid on him by the acts of 3 *W.* *c.* 12. and 1 *G.* *ſt.* 2. *c.* 52. for any neglect of his duty, on either of the ſaid acts, to be levied in like manner.

V. Who

V. Who ſhall repair.

It ſeems to be agreed, that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the pariſh wherein they are: But there is no doubt, but particular perſons may be burdened with the general charge of repairing a highway, in two caſes: Pariſh in general to repair.

1. In reſpect of an incloſure of the land wherein it lies; as where the owner of lands not incloſed, next adjoining to the highway, incloſeth his lands on both ſides thereof; in which caſe, he is bound to make a perfect good way, and ſhall not be excuſed for making it as good as it was at the time of the incloſure, if it were then any way defective; becauſe, before the incloſure, the people uſed, when the way was bad, to go for their better paſſage, over the fields adjoining, out of the common tract, which liberty is taken away by the incloſure. 1 *Haw.* 202. Repairing in reſpect of an incloſure.

And if the way is not ſufficient, any paſſenger may break down the incloſure, and go over the land, and juſtify it, till a ſufficient way is made. 3 *Salk.* 182.

Alſo it hath been holden, if one incloſe land on one ſide, which hath been anciently incloſed of the other ſide, he ought to repair all the way; but if there be not ſuch an ancient incloſure of the other ſide, he ought to repair but half that way; and it is ſaid, that wherever one is bound to repair a highway, in reſpect of an incloſure, and lays it open again as it was before, he ſhall be freed from the charge of repairing it. 1 *Haw.* 202.

2. A particular perſon may be bound to repair a highway, in reſpect of a preſcription; and it is ſaid, that a corporation aggregate may be compelled to do it, by force of a general preſcription, that it ought and hath uſed to do it, without ſhewing that it uſed to do ſo in reſpect of the tenure of certain lands, or for any other conſideration; becauſe ſuch a corporation in judgment of law never dies, and therefore if it were ever bound to ſuch a duty, it muſt needs continue to be always ſo; neither is it any plea, that ſuch corporation hath always done it out of charity, for what it hath always done, it ſhall be preſumed to have been always bound to do: but it is ſaid, that a perſon cannot be charged with ſuch a duty, by a general preſcription from what his anceſtors have done, unleſs it be for ſome ſpecial reaſon, as the having land deſcended from ſuch anceſtors, which are holden by ſuch like ſervice. 1 *Haw.* 202. Repairing by preſcription.

Yet it ſeems, that an indictment charging a tenant in fee ſimple, with having uſed of right to repair ſuch a way by reaſon of the tenure of his land, is certain enough, without adding, that his anceſtors or thoſe whoſe eſtate he hath, have always ſo done; for that is implied. 1 *Haw.* 203.

But the indictment muſt ſet forth, where thoſe lands lie. 2 *H. H.* 181.

VI. The

VI. The proportion of labourers and carriages.

Proportion of labour.

1. Every perſon, for every ploughland in tillage or paſture that he ſhall occupy in the pariſh, ſhall find and ſend at every day and place appointed, one wain or cart, furniſhed after the cuſtom of the country with oxen, horſes, or other cattle, and all other neceſſaries meet to carry things convenient for that purpoſe, and alſo two able men with the ſame. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

Every perſon] It hath been holden, that perſons in holy orders are within the purview of theſe ſtatutes, in reſpect of their ſpiritual poſſeſſions, as much as any other perſons whatſoever in reſpect of any other poſſeſſions; for the words are general, and there is no kind of intimation that any particular perſons ſhall be exempted more than others. 1 *Haw.* 204.

For every ploughland] Therefore if he occupies and keeps in his poſſeſſion ſeveral ploughlands in ſeveral towns, he ſhall be charged to find in each town or pariſh where ſuch ploughlands do lie, one cart or carriage, in like manner as if he were a pariſhioner in the ſeveral pariſhes. 18 *El. c.* 10. *ſ.* 4.

Ploughland] By the 7 & 8 *W. c.* 29. A ploughland, as to repairing highways, is limited to 50 *l.* a year.

That he ſhall occupy] It hath been holden, that notwithſtanding the words of the ſtatute extend only to the occupiers of land, yet if the owner neither occupy them, not let them, but ſuffer them to lie freſh, he ſhall be charged as much as if he had occupied them; for there is no reaſon that the publick ſhould ſuffer for his negligence. 1 *Haw.* 204.

In the pariſh] And if he ſhall occupy a ploughland lying in ſeveral pariſhes, he ſhall be chargeable within the pariſh where he dwelleth, in like manner as a perſon having a ploughland in any one pariſh. 18 *El. c.* 10. *ſ.* 3.

2. Alſo every perſon keeping a draught or plough in the pariſh, ſhall find and ſend one wain or cart in like manner, with two able men. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

And it hath been holden, that he who keeps ſeveral draughts in a pariſh, is bound to ſend a team for each draught, whether he occupy any land in the pariſh or not. 1 *Haw.* 204.

3. And where there is no uſe of carts and teams for amending of highways, but the uſage is to carry materials on horſes backs or any other kind of carriage; the inhabitants ſhall ſend ſuch horſes or carriages, with able perſons to work with the ſame, under the like penalty as for carts and teams. 22 *C.* 2. *c.* 12. *ſ.* 8.

4. And if the ſaid carriages ſhall not be thought needful by the ſurveyor, then the perſon that ſhould have ſent ſuch carriage, ſhall for every carriage ſo ſpared, ſend two able men. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

5. Moreover, beſides thoſe perſons who are obliged to ſend carriages, every other perſon (except in *London*) that ſhall be aſſeſſed to

to the payment of any ſubſidy, to 5 *l.* in goods, or 40 *s.* in lands, ſhall find two able men. 18 *El. c.* 10. *ſ.* 2.

6. And every other houſholder, cottager, and labourer, able to labour, and being no hired ſervant by the year, ſhall by himſelf or one ſufficient labourer, work on the ſaid days. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

VII. Providing materials.

Surveyor may take and carry away rubbiſh.

1. The ſurveyor may take and carry away of the rubbiſh or ſmalleſt broken ſtones of any quarry within the pariſh, without licence, controulment, or impeachment of the owner, ſo much as he ſhall judge neceſſary for repairing the ways. 5 *El. c.* 13. *ſ.* 3.

But he may not cauſe any rubbiſh to be digged out of a quarry, but only ſhall have ſuch as ſhall be found there ready digged by the owner or his order. *ſ.* 4.

May gather ſtones.

2. And for default of any quarry, not being within his limits, or in default of rubbiſh not to be found there, he may gather ſtones lying upon any grounds within the pariſh, and meet to be uſed for ſuch purpoſe; and thereof take and carry away ſo much as by his diſcretion ſhall be thought neceſſary to be employed in the amendment of the highways. 5 *El. c.* 13. *ſ.* 3.

May dig for gravel.

3. Likewiſe in default of ſuch quarry, or in default of ſuch rubbiſh in any ſuch quarry, he may in the ſeveral ground of any perſon within his limits, and nigh adjoining to the highway, and wherein gravel, ſand, or cinders are likely to be found, dig or cauſe to be digged for them. 5 *El. c.* 13. *ſ.* 3.

But he may not dig for the ſame, in any man's houſe, garden, orchard, or meadow. *id. ſ.* 4.

Nor ſhall he cauſe any more pits to be digged for gravel, in any ſeveral and incloſed ground than one only, nor ſhall the pit be in length or breadth above ten yards over; and he ſhall within a month cauſe the pit to be filled with earth at the coſts of the pariſhioners; on pain of forfeiting to the owner of the ſoil, five marks, to be recovered by action of debt. *id. ſ.* 4.

And by the 26 *G.* 2. *c.* 28. If any perſon ſhall by reaſon of getting any gravel, ſand, ſtones, chalk, or other materials, for repairing any highway, or for any other purpoſe whatſoever, make or cauſe to be made any pit or hole in any common, heath, or waſte ground, he ſhall forthwith cauſe the ſame to be ſufficiently fenced off during ſuch time as it ſhall be continued open, and ſhall within 14 days after digging for ſuch materials in ſuch pit or hole, cauſe the ſame to be filled up, ſloped down or fenced off, and ſo continued; and if he ſhall not fill up, ſlope down or fence off the ſame, and keep the ſaid fence from time to time in good repair, one juſtice on view, or oath of one witneſs, may order him to fill up, properly ſlope down, or fence off the ſame, and where any fence ſhall be ſet up may order the ſame to be repaired; and if he ſhall not comply with ſuch order in ten days after his receipt thereof, or the ſame being left at his uſual place of abode, and due proof being made upon oath before any one juſtice, of the offence committed, of the ſervice of ſuch order, and

and of the refuſal or neglect to comply therewith, ſuch perſon ſhall forfeit not exceeding 10*l.* nor leſs than 40*s.* to be laid out in filling up, ſloping down, or fencing off the ſame, and towards the repair of the roads in the pariſh or place where the offence ſhall be committed, and in ſuch manner as the juſtice ſhall direct; which, if not forthwith paid, ſhall be levied by diſtreſs, by warrant of ſuch juſtice.

May purchaſe materials.

4. And whereas divers pariſhes and townſhips have not any gravel, ſtones, quarries, nor other materials, fit for repairing highways, and the ſurveyor is forced to lay out his own money for buying the ſame, it is enacted, that upon notice given by the ſurveyor to the ſpecial ſeſſions, and oath made of what ſum he hath laid out, the juſtices there, or two of them, ſhall by warrant under their hands and ſeals cauſe an equal rate to be made for reimburſing the ſurveyor, according to the method of the poor rate preſcribed by the 43 *El. c.* 2. which rate being confirmed and allowed by the ſaid juſtices in their ſpecial ſeſſions, ſhall be collected by the ſurveyor; and if any perſon refuſe to pay, it ſhall be levied by the ſurveyor by diſtreſs. 3 *W. c.* 12. *ſ.* 13.

And if the juſtices refuſe to make a rate, they are compellable by *mandamus* from the king's bench, on affidavit of the money having been laid out; and the *mandamus* ſhall be directed to the juſtices of the county, and ſerved on thoſe of the private ſeſſions. 1 *Haw.* 206.

Six days labour.

VIII. Concerning the ſix days work.

1. The ſurveyor ſhall appoint ſix days, for the providing ſtones, gravel, and other materials as aforeſaid, and for working in the highways, having reſpect to the ſeaſon of the year, and the weather, and giving notice publickly ſome convenient time before the ſeveral days. 22 *C.* 2. *c.* 12. *ſ.* 12.

2. And the juſtices at the ſpecial ſeſſions, by writing under their hands and ſeals may order the reparation of thoſe great roads which do moſt want repair, to be firſt amended, and at what time, or in what manner, the ſame ſhall be performed; according to which order the ſurveyor ſhall proceed; and if they make no ſuch order, then according as to the ſurveyor ſhall ſeem moſt needful: And he ſhall take care, as far as poſſible, that the work be perfected before the time of harveſt. 1 *G. ſt.* 2. *c.* 52. *ſ.* 3, 4.

3. At the ſaid ſeveral days ſo appointed, all perſons liable ſhall attend and work. 22 *C.* 2. *c.* 12. *ſ.* 12.

4. And every perſon and carriage ſhall have with them ſuch ſhovels, ſpades, picks, mattocks, and other tools and inſtruments, as they make their own ditches and fences with, and ſuch as are neceſſary for the work. 2 & 3 *P.* & *M. c.* 8. *ſ.* 2.

5. And they ſhall work eight hours each day, unleſs they be otherwiſe licenſed by the ſurveyor. 2 & 3 *P.* & *M. c.* 8. *ſ.* 2.

6. And if any perſon ſhall fail to make his reſpective days labour, or neglect to ſend his horſes and carriages, the ſurveyor ſhall give an account thereof in writing on oath to the ſpecial ſeſſions, and

and two juſtices there may levy by diſtreſs and ſale of the goods of ſuch defaulter (not having a reaſonable excuſe to be allowed by the ſaid juſtices) for every day labourer 1 *s.* 6 *d.* for a man and horſe 3 *s.* for a cart with two men 10 *s.* each day. 22 *C.* 2. *c.* 12. *ſ.* 9. 1 *G. ſt.* 2. *c.* 52. *ſ.* 2. Or the leet may inquire thereof, by fine and eſtreat. 2 *&* 3 *P. & M. c.* 8. *ſ.* 2.

IX. Of annoyances in general.

Annoyances and removal thereof.

1. There is no doubt, but that all injuries whatſoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act, which will render it leſs commodious to the king's people, are publick nuſances at common law. 1 *Haw.* 212.

2. And by the common law any one may abate a nuſance to a highway, and remove the materials, but not convert them to his own uſe. 1 *Haw.* 214.

3. Alſo it ſeemeth, that an heir may be indicted for continuing an incroachment, or other nuſance to a highway, begun by his anceſtor; becauſe ſuch a continuance thereof amounts in the judgment of law to a new nuſance. 1 *Haw.* 214.

4. And by the ſtatute of the 3 *W. c.* 12. *ſ.* 8. If ſuch annoyances ſhall not be removed and amended within 30 days after notice given in the church immediately after ſermon, by the ſurveyor, he ſhall within 30 days remove and amend the ſame, and diſpoſe thereof for the repair of the highways. And he ſhall be reimburſed what charges he ſhall be at in ſo doing, by the parties who ſhould have done the ſame; and if they ſhall upon demand refuſe or neglect to pay the ſame, the ſurveyor ſhall apply to a juſtice of the diviſion, and in default thereof to a neighbouring juſtice of the county, and upon his making oath before ſuch juſtice of the notice to the defaulter in manner aforeſaid, he ſhall be repaid all ſuch his charges as ſhall be allowed to be reaſonable by the ſaid juſtice, to be levied by diſtreſs.

5. And by the 1 *G. ſt.* 2. *c.* 52. If they ſhall not be removed in 30 days, after due notice thereof given by the ſurveyor; the offender ſhall forfeit any ſum not exceeding 5 *l.* nor under 20 *s.* to be levied by warrant of the juſtices at the ſpecial ſeſſions, by diſtreſs. *ſ.* 8.

X. Ditches adjoining to the highway.

Ditches.

1. To ſuffer the ditches adjoining to a highway to be foul, by reaſon whereof it is impaired, is a nuſance at common law. 1 *Haw.* 212.

2. And it is ſaid, that he who hath lands next adjoining to a highway, is bound of common right to ſcour his ditches: But it is ſaid, that he who hath lands next adjoining to ſuch lands, is not bound by the common law ſo to do, without ſome ſpecial preſcription for that purpoſe. 1 *Haw.* 213.

3. And by the ſtatute of the 5 *El. c.* 13. *ſ.* 7. The ditches next adjoining to the highway ſhall be ſcoured by the owner of the ſoil which ſhall be incloſed with the ſame.

4. And by the 1 *G. ſt.* 2. *c.* 52. If any perſon who ought to ſcour and keep open ditches, adjoining to the highways, ſhall not amend the ſame in 30 days after due notice from the ſurveyor, or ſhall leave the earth of ditches ſcoured in the highways for the ſpace of eight days, he ſhall (on oath being made thereof at the ſpecial ſeſſions by the ſurveyor) forfeit for every eight yards of ditching not ſcoured and kept open 2*s.* 6*d.* by warrant of the juſtices at the ſaid ſpecial ſeſſions, by diſtreſs. And the ſurveyor ſhall ſcour and open the ſaid ditches. *ſ.* 8.

Water.

XI. Water in the highway.

1. The ſurveyor may turn any watercouſe or ſpring of water, being in the highway, into any ditch of the ſeveral ground of any perſon next adjoining to the highway, as by his diſcretion ſhall be thought meeteſt and moſt convenient. 5 *El. c.* 13. *ſ.* 6.

2. And every perſon that ſhall occupy any lands adjoining to the ſaid ground ſo adjoining to any highway, where any ditching or ſcouring ought to be, ſhall, as need ſhall require, ditch and ſcour in his ground ſo adjoining, whereby the water conveyed from the highway over the ground next adjoining, may have paſſage over the ſaid ground ſo next adjoining. 18 *El. c.* 10. *ſ.* 6.

3. And if any perſon who ought to ſcour and keep open uſual watercourſes, adjoining or near to the highways, and effectually to amend them, ſhall by the ſpace of thirty days after due notice thereof given by the ſurveyor, neglect or delay to do the ſame, he ſhall (on oath thereof being made by the ſurveyor, before the juſtices at the ſpecial ſeſſions) forfeit for every eight yards ſo not ſcoured and kept open, 2*s.* 6*d.* to be levied by warrant of the ſaid juſtices, by diſtreſs. And the ſurveyor ſhall ſcour and keep open ſuch ditches and watercourſes; and where the ditches and drains already made are not ſufficient to carry off the water, the ſurveyor may make new ones in and through the lands next adjoining or near to the highways, and keep them ſcoured, cleanſed, and open, and may come upon the lands with their workmen for that purpoſe. 1 *G. ſt.* 2. *c.* 52. *ſ.* 8. 3 *W. c.* 12. *ſ.* 12.

Hedges.

XII. Hedges adjoining to the highway.

1. It ſeemeth clear, that it is a nuſance at common law, to ſuffer the boughs of trees growing near the highway, to hang over the road in ſuch a manner, as thereby to incommode the paſſage. 1 *Hawk.* 212.

2. And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the ſame; and it ſeems clear, that any perſon may juſtify the lopping ſuch trees, ſo far as to avoid the nuſance. 1 *Hawk.* 213.

3. And

3. And by the ſtatute of the 7 G. 2. *c.* 9. it is provided, that if the ſurveyor on his view ſhall find any highway deep and foundrous, and the hedge adjoining to be ſo high as to prevent the benefit of the ſun and wind, he ſhall make a preſentment thereof to the juſtices at their ſpecial ſeſſions; which juſtices, or two of them, may by warrant ſummon the occupier of the lands adjoining to the highway, to appear at the next monthly or other publick meeting of the juſtices, in or near the diviſion, to ſhew cauſe why ſuch hedge ſhould not be new made, or cut low; and if ſuch perſon appear not, nor ſend ſome perſon to appear, or if it ſhall appear upon proof on oath that ſuch way is deep and foundrous, and damaged by the height of ſuch hedge, the ſaid juſtices, or two of them, ſhall iſſue a precept under hand and ſeal to the ſurveyor, to give or leave notice in writing at the uſual place of abode of ſuch perſon whoſe hedge was preſented, that he is thereby required to new make or cut low the ſaid hedge, within 30 days after ſuch notice (provided that ſuch notice be given between *September* 30. and *February* 1.) and in caſe of his refuſal or neglect to do the ſame within the ſaid 30 days, the ſurveyor ſhall cauſe the hedge to be new made or cut low, as he ſhall think moſt reaſonable, ſo as ſuch hedge be left at leaſt three foot high above the bank. *ſ.* 1.

And ſuch perſon ſhall repay to the ſurveyor ſuch reaſonable expences as he ſhall have been put to on that occaſion; and if he ſhall refuſe or neglect to repay the ſame, within 14 days after demand, the juſtices upon complaint thereof at their monthly or other publick meeting, in or near the diviſion, and due proof upon oath of ſuch expences of the ſurveyor, ſhall iſſue a precept under the hands and ſeals of them, or two of them, to the conſtable or other proper officer of the hundred, pariſh, or place, requiring him to levy the ſaid ſum by diſtreſs. *id. ſ.* 2.

But nothing herein ſhall alter the laws in relation to timber trees, which grow in hedges adjoining to the highways. *id. ſ.* 3.

XIII. Wood growing in the highway.

Wood.

No tree, buſh, or ſhrub, ſhall be permitted to grow in any highway not full 20 foot broad, but ſhall be cut down, grubbed up, and carried away by the owner of the land or ſoil, in ten days after notice given to him by the ſurveyor; on pain of 5*s.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices of the county. 3 *W.* *c.* 12. *ſ.* 6.

XIV. Straw, dung, ſtones, timber, laid in the highway.

Straw, dung, ſtones, timber.

1. There is no doubt, but that all obſtructions by laying ſtraw, dung, ſtones, logs of timber, and the like, in the highway, are nuſances at common law. 1 *Haw.* 212.

2. And it ſeemeth to be clear, that it is no excuſe for one who layeth ſuch logs in the highway, that he laid them only here and there, ſo that the people might have a paſſage by windings and turnings thro' the logs: yet it is ſaid to be no nuſance for the inhabitants of a town to unlade billets, and the like, in the ſtreet before their houſes, by reaſon of the neceſſity of the caſe, unleſs they ſuffer them to continue there an unreaſonable time after they are unloaded. 1 *Haw.* 212.

3. And by the ſtatute of 3 *W.* *c.* 12. No perſon ſhall lay in any highway not being 20 foot broad, any ſtone, timber, ſtraw, dung, or other matter, whereby the ſame ſhall be any ways obſtructed or annoyed; on pain of 5*s.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices of the county. *ſ.* 4.

And if any timber, ſtone, hay, ſtraw, ſtubble, or other matter for the making of dung, or on any other pretence, ſhall be laid in any ſuch highway, whereby the ſame ſhall be any ways obſtructed or annoyed; the owner or poſſeſſor of the lands next adjoining, ſhall clear the way by removing the ſame, and ſhall take the ſame to his own uſe: and if he ſhall neglect ſo to do, for ten days after notice given to him by the ſurveyor, he ſhall forfeit 5*s.* in like manner. *ſ.* 5.

4. And by the 1 *G.* *ſt.* 2. *c.* 52. If any perſon who ought to remove ſuch annoyances, ſhall for 30 days after due notice thereof given by the ſurveyor, neglect or delay to do the ſame; he ſhall forfeit not exceeding 5 *l.* nor under 20*s.* by warrant of the juſtices at the ſpecial ſeſſions, by diſtreſs: and the ſurveyor ſhall remove the ſame. *ſ.* 8.

Gate.

XV. Gate erected acroſs the highway.

A Gate erected in a highway, is a common nuſance, becauſe it interrupts the people in that free and open paſſage which they before enjoyed, and were lawfully intitled to; but where ſuch a gate has continued time out of mind, it ſhall be intended that it was ſet up at firſt by conſent, on a compoſition with the owner of the land on the laying out the road, in which caſe the people had never any right to a freer paſſage than what they ſtill enjoy. 1 *Haw.* 199.

XVI. Nuſance by an unlawful number of horſes or beaſts in carriages.

This is to be underſtood with reſpect to highways in general; what concerneth the number of horſes or beaſts in carriages upon *turnpike* roads in particular, is treated of hereafter in its place.

Penalty of having above five horſes in length.

1. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed in or about huſbandry and manuring of lands, and in the carrying of hay,

hay, ſtraw, corn unthraſhed, coal, chalk, timber for ſhipping, materials for building, ſtones of all ſorts, ammunition or artillery for his majeſty's ſervice) ſhall travel in any highway, with above five horſes at length; on pain of 40*s.* on conviction before one juſtice, on his view, or oath of one witneſs, by diſtreſs. 22 *C.* 2. *c.* 12. *ſ.* 7.

And every conſtable, or ſurveyor, wilfully ſuffering any waggons or carts to paſs thro' his limits, in other manner than by this act is allowed, ſhall forfeit in like manner 40*s.* *id. ſ.* 1.

Penalty of having above five horſes or oxen in length.

2. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed about huſbandry and manuring of lands, and in the carrying of hay, ſtraw, corn unthraſhed, chalk, timber for ſhipping, materials for building, ſtones of all ſorts, ammunition or artillery for his majeſty's ſervice) ſhall go with above five horſes, oxen, or beaſts in length; on the like pains, and ſubject to the like proviſoes, as by the 6 *An.* *c.* 29. and 9 *An.* *c.* 18. hereafter following. 1 *G.* *c.* 11.

Penalty of having above ſix horſes in length, pairs, or ſideways.

3. No waggon (whether travelling for hire or not, 14 *G.* 2. *c.* 42. *ſ.* 6.) ſhall go or be drawn with more than ſix horſes, either in length, or in pairs, or ſideways; on pain that the owner or driver ſhall forfeit all his horſes above ſix, with all geers, bridles, halters, and accoutrements, to him who ſhall ſeize or diſtrain the ſame. And the perſon who ſhall make ſuch ſeizure or diſtreſs, ſhall deliver the ſame to the conſtable, or ſome pariſh officer, of the ſame or next adjacent pariſh where the ſeizure is made, till the perſon ſeizing ſhall make proof upon oath before ſome juſtice, of the offence committed; and the ſaid juſtice ſhall iſſue his precept to ſuch officer, immediately to deliver the ſame for the ſole uſe of the perſon ſeizing, paying ſuch reaſonable charge for keeping and ſecuring the ſame, as the juſtice ſhall direct. And if any perſon ſhall attempt to obſtruct the execution hereof, he ſhall on conviction by the oath of one witneſs before one juſtice, be committed to gaol for three months, and ſhall alſo forfeit 10 *l.* by warrant of ſuch juſtice by diſtreſs, and if not paid in three days, the diſtreſs to be ſold. 5 *G.* *c.* 12.

But the ſtatute of the 27 *G.* 2. *c.* 20. allows a further time for keeping all ſuch diſtreſſes, *viz.* not leſs than four days, nor more than eight.

Or, before the goods are ſeized, oath may be made at any time within three days, before any juſtice where the offence was committed, or the offender ſhall happen to be; and the goods ſhall remain for three days after the offence liable to ſeizure and diſtreſs, for the uſe of the informer in like manner as if they had been ſeized in the fact. 14 *G.* 2. *c.* 42. *ſ.* 6.

Or (as hath been ſaid at the beginning of this title) an action of trover may be brought for the ſame, wherein if the plaintiff recovers, he ſhall have double coſts. 24 *G.* 2. *c.* 43. *ſ.* 11.

H. 16 *G.* 2. *K.* and *Thomas Sergiſon*, eſquire. An information was moved for againſt him, for not condemning a horſe taken out of a team under the ſtatute of the 5 *G.* *c.* 12. which requires proof to be made before a juſtice, of the cauſe of forfeiture; and

the party who ſeized tendring his own oath, the defendant ſcrupled to take it, or to determine the affair in the abſence of the owner or driver. And by the court, They were both reaſonable objections. Why is not the perſon who ſeized, and is to have the benefit of the forfeiture, within the reaſon of excluding informers where there is a penalty? *Making proof* muſt mean *legal proof*. The other alſo is but natural juſtice: There are exceptions in the act, as to one ſtone, or one piece of timber, though drawn by ever ſo many horſes; and ought not the owner to have an opportunity of ſhewing it? And the rule was diſcharged with coſts. *Str.* 1181.

Or above four horſes in carts.

And moreover, no cart (whether travelling for hire, or not for hire, 14 *G.* 2. *c.* 42. *ſ.* 6.) ſhall be driven with more than (four horſes, 16 *G.* 2. *c.* 29.); on pain that the owner or driver ſhall in like manner forfeit all the horſes above four, with the geers, bridles, halters, and accoutrements. 5 *G. c.* 12. *ſ.* 1.

But nothing in this ſection ſhall extend to ſuch waggons, wains, carts, or carriages, as ſhall be employed about huſbandry or manuring of land, and in the carrying of cheeſe, butter, hay, ſtraw, corn unthreſhed, coals, chalk, or any one tree or piece of timber, or any one ſtone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private uſe, or ſuch timber, ammunition, or artillery as ſhall be for the ſervice of the king, his heirs, and ſucceſſors. 5 *G. c.* 12. *ſ.* 5.

Penalty of having above ſix horſes or oxen, in length, pairs, or ſideways.

4. By 6 *An. c.* 29. and 9 *An. c.* 18. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed in and about huſhandry and manuring of land, and in the carrying of hay, ſtraw, (corn unthreſhed, 1 *G. c.* 11.) chalk, timber for ſhipping, materials for building, ſtones of all ſorts, or ammunition or artillery for the ſervice of his majeſty, his heirs, or ſucceſſors) ſhall travel or go in any highway, with above ſix horſes, oxen, or beaſts; on pain of 5 *l.* And any perſon may ſeize or diſtrain any or all the horſes, oxen, or beaſts of any perſon offending herein, and forthwith deliver them to the ſurveyor or other pariſh officer, and if the penalty is not paid in three days, ſuch officer ſhall by warrant of one juſtice ſell the ſame; rendering the overplus, charges firſt deducted.

And if any perſon employed by any carrier, drive or aſſiſt in driving ſuch unlawful number, he ſhall forfeit 5 *l.* in like manner.

And the ſurveyor wilfully ſuffering them to travel with more, ſhall alſo in like manner forfeit 5 *l.*

Exception of drawing up ſteep hills.

5. But nothing in any of the aforeſaid acts ſhall extend to reſtrain the owners of waggons or other carriages, or their ſervants, drawing with ſo many horſes or beaſts, up any ſuch ſteep hills, as the juſtices at the quarter ſeſſions ſhall from time to time order and direct; which order ſhall be kept by the clerk of the peace amongſt the records of the ſeſſions, to which all perſons at reaſonable times, ſhall have recourſe *gratis*. 24 *G.* 2. *c.* 43. *ſ.* 10.

Exception where the wheels are nine inches broad.

6. Alſo, it ſhall be lawful for any waggon or other four wheel carriage, having the fellies of the wheels nine inches broad, to

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paſs on any highway, with any number of horſes and beaſts not exceeding eight; and for any cart or two wheel carriage, having the like wheels, with any number not exceeding five; without being ſubject to any penalties for cauſing them to be driven by a greater number. 26 G. 2. c. 30. ſ. 6.

XVII. Nuſance by unlawful breadth and tire of wheels.

Breadth of wheels.

1. No travelling waggon for hire (other than ſuch as are employed in huſbandry, and in carrying of cheeſe, butter, hay, ſtraw, corn unthreſhed, coals, chalk, or any one tree or piece of timber, or any one ſtone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private uſe, or timber, ammunition, or artillery for the king's ſervice) having the wheels bound with ſtreaks or tire of a leſs breadth than two inches and an half when worn, or being faſtened on with roſeheaded nails, ſhall go or be drawn with more than three horſes, between *Sep.* 29. and *April* 15. yearly; on pain that every owner or driver thereof, ſhall forfeit all the horſes above three, with all geers, bridles, halters, and accoutrements; to be ſeized, diſtrained, or otherwiſe recovered, as the number of horſes above ſix in a waggon either in length, pairs, or ſideways, as is particularly ſpecified under the third ſection of the laſt preceding head. 5 G. c. 12. 14 G. 2. c. 42. ſ. 2, 6. 15 G. 2. c. 2. 24 G. 2. c. 43. ſ. 11.

[What belongeth to the breadth of wheels upon turnpike roads in ſpecial, is treated of under the article relating to turnpikes hereafter following.]

Wheels in London.

2. No perſon in *London* and *Weſtminſter*, or within 10 miles thereof (unleſs it be with broad wheels upon turnpike roads, 26 G. 2. c. 30. ſ. 5.) ſhall carry at any one load, in waggons or carts having their wheels ſhod with iron, more than 12 ſacks of meal of five buſhes each, nor more than 12 quarters of malt, nor more than 700 ½ of bricks, nor more than one chalder of coals; on pain of forfeiting any one of the horſes, with the geers, bridles, and halters therewith uſed, on conviction in three days before one juſtice. 6 G. c. 6. 5 G. c. 12. 14 G. 2. c. 42. ſ. 6.

And by the 18 G. 2. c. 33. The wheels of every cart, car, or dray within the bills of mortality, ſhall be ſix inches broad in the felley, and not wrought about with iron, nor be drawn with above the number of three horſes, after they are up the hills from the water ſide; on pain of 40 *s.* by warrant of one juſtice, by diſtreſs; and for want of diſtreſs, or non-payment in ſix days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that ſhall bring any goods, or ſhall carry any goods half a mile beyond the paved ſtreets of the ſaid cities and places.

Alſo any perſon, within the ſaid limits, uſing any cart, car, or dray, having the wheels full ſix inches broad, when worn, may have the ſame bound round with tire of iron, provided it be ſix

inches broad, and made flat, and not ſet on with roſe-headed nails.

XVIII. Nuſance by riding upon carriages, or the drivers otherwiſe miſbehaving.

1. By the 1 *G. ſt.* 2. *c.* 57. If any perſon, driving any cart, dray, or waggon, in the ſtreets of *London*, ſhall ride upon the ſame, not having ſome other perſon on foot to guide the ſame; he ſhall on conviction before the alderman of the ward, or juſtice of the peace, on oath of one witneſs, forfeit 10*s.* by diſtreſs and ſale; half to the informer, and half to the poor; and in default of payment, to be ſent to the houſe of correction for three days. *ſ.* 8.

2. And by the 24 *G.* 2. *c.* 43. If any carter, drayman, carman, waggoner, or other driver ſhall ride upon the ſame in *London* or within ten miles thereof, not having ſome other perſon on foot to guide the ſame, he ſhall on the like conviction, forfeit 10*s.* in caſe ſuch driver ſhall not be the owner of ſuch carriage; and in caſe he be the owner, then any ſum not exceeding 20*s.* To be recovered, levied, and applied, as by the aforeſaid act of the 1 *G. ſt.* 2. *c.* 57. And any perſon, though not a peace officer, may ſtop and apprehend ſuch offender, and carry him as ſoon as conveniently may be before a juſtice; and if any perſon ſhall reſiſt, abuſe, or prevent any perſon endeavouring to apprehend ſuch offender, or when he is apprehended, ſhall reſcue, or endeavour to reſcue him, he ſhall forfeit 20*s.* in like manner. *ſ.* 8, 9.

3. And, more generally, by the 27 *G.* 2. *c.* 16. If the driver of any cart, car, dray, or waggon, ſhall ride upon any ſuch carriage, not having ſome other perſon on foot or on horſeback to guide the ſame (ſuch carts as are reſpectively drawn by one horſe only, or by two horſes abreaſt, and are conducted by ſome perſon holding the reins of ſuch horſe or horſes, excepted); or if the driver of any carriage whatſoever, on any part of any ſtreet or highway, ſhall by negligence or wilful miſbehaviour, cauſe any hurt or damage to any perſon paſſing or being thereon; Every ſuch driver offending in any of the caſes aforeſaid, and being convicted thereof, by confeſſion, or oath of one witneſs, before one juſtice, ſhall forfeit any ſum not exceeding 10*s.* or ſhall be committed to the houſe of correction, for any time not exceeding one month, at the diſcretion of ſuch juſtice. And every ſuch driver, offending in either of the ſaid caſes, may by authority of this act, and without any other warrant, be apprehended by any perſon who ſhall ſee the offence committed, and ſhall be immediately conveyed or delivered to a conſtable, or other peace officer, in order to be conveyed before a juſtice, to be dealt with according to law. *ſ.* 7.

Note; It is not ſaid who ſhall have this penalty, ſo that it ſeemeth that the juſtice ſhall eſtreat the ſame into the exchequer: And here is no power given to levy the ſame by diſtreſs; but if the party

party ſhall not pay upon conviction, the juſtice (by the act) may commit him to the houſe of correction.

XIX. Pulling up blocks in the highway.

Blocks.

Every perſon who ſhall pull up, cut down, or remove any poſt, block, great ſtone, bank of earth, or other ſecurity, made for ſecuring horſe and foot cauſways from waggons, wains, and carts; ſhall (on conviction before one juſtice of the place or diviſion, on view, or oath of one witneſs) forfeit 20 *s.* by diſtreſs. 7 & 8 *W. c.* 29. *ſ.* 6.

XX. Concerning guide poſts.

Guide poſts.

The juſtices, at the ſpecial ſeſſions, may direct their precept to the ſurveyors, in any place where two or more croſs highways meet, requiring them forthwith to cauſe to be erected or fixed, in the moſt convenient place where ſuch ways join, a ſtone or poſt, with an inſcription thereon in large letters, containing the name of the next market town, to which each of the ſaid joining highways leads; who ſhall be reimburſed in the ſame manner as before is mentioned concerning the providing of materials. And if the ſurveyor ſhall, by the ſpace of three months after ſuch precept to him delivered, neglect or refuſe to cauſe ſuch ſtone or poſt to be fixed; he ſhall forfeit 10 *s.* to be levied by warrant of one juſtice by the conſtable, by diſtreſs, who ſhall employ it towards ſuch ſtone or poſt; and if any thing remains, he ſhall employ it in repairing ſuch croſs ways. 8 & 9 *W. c.* 16. *ſ.* 7.

XXI. Breadth and widening of the highways.

Breadth.

1. The ſurveyor ſhall make every cart way leading to any market town, eight foot wide at the leaſt. 3 *W. c.* 12. *ſ.* 15.

2. And no horſe cauſway ſhall be leſs than three foot broad. 3 *W. c.* 12. *ſ.* 21.

3. By the 8 & 9 *W. c.* 16. The juſtices, or the major part of them, being five at the leaſt, at the quarter ſeſſions, ſhall have power to inlarge or widen any highways, ſo that the ground to be taken into them do not exceed eight yards in breadth, and ſo that the ſaid power do not extend to pull down any houſe, or to take away the ground of any garden, orchard, court, or yard. *ſ.* 1.

In order whereunto, they ſhall iſſue their precepts to the owners of grounds, or others intereſted in the ſame, that are to be laid into the ſaid highways, to appear at the next quarter ſeſſions, to ſhew cauſe why the ſaid highways ſhould not be inlarged. *ſ.* 3.

And for the ſatisfaction of perſons who are intereſted in the ſaid ground, they are impowered to impanel a jury, and ſwear them, that they will aſſeſs ſuch damages to be given and recompence to be made to the owners and others intereſted in the ſaid ground rent or charge reſpectively, for their reſpective intereſts, as they ſhall think reaſonable, not exceeding 25 years purchaſe for lands

ſo

ſo laid out; and likewiſe ſuch recompence as they ſhall think reaſonable, for the making a new ditch and fence, to that ſide of the highway that ſhall be ſo enlarged, and alſo ſatisfaction to any perſon that may be otherwiſe injured by inlarging the ſaid highways. *ſ.* 1.

And they ſhall have power to order an aſſeſſment to be made upon all the inhabitants, owners, or occupiers of lands, houſes, tenements, or hereditaments, that ought to repair the ſame, in ſuch manner as the ſaid juſtices ſhall appoint. *ſ.* 1.

Provided, that no ſuch aſſeſſment in any one year, for inlarging highways, ſhall exceed 6*d.* in the pound of the yearly income of any lands, houſes, tenements, and hereditaments, nor the rate of 6*d.* in the pound for perſonal eſtates. *ſ.* 2.

And the ſaid aſſeſſment ſhall by order of the ſaid juſtices be levied by the ſurveyor, by diſtreſs, if not paid in ten days after demand. *ſ.* 1.

And the money thereby raiſed, ſhall be imployed and accounted for, according to the order of the ſaid juſtices, towards purchaſing the ſaid lands, and making the ſaid ditches and fences. *ſ.* 1.

And upon payment of the money ſo awarded, or leaving it in the hands of the clerk of the peace for the uſe of the owner, or others intereſted in the ſaid ground, the intereſt of the ſaid perſons in the ſaid ground rent or charge, ſhall be for ever diveſted out of them. *ſ.* 1.

And the ſaid ground ſhall be eſteemed a publick highway to all intents and purpoſes. *ſ.* 1.

Provided, that if any ſuch order ſhall be made by the ſaid juſtices for the laying out of ground for the enlarging of highways, the owners of the ground ſhall have free liberty, within 8 months after ſuch order, to cut down any wood or timber growing thereon; or upon the neglect thereof, the ſame ſhall be ſold by order of the juſtices, and the owners ſhall receive the full of what ſhall be made thereof, the charges of working the ſame being deducted. *ſ.* 4.

And any perſon aggrieved by the order of the juſtices, may appeal to the next aſſizes; and if the judge ſhall affirm the order, he may award coſts againſt the appellant, to be levied by diſtreſs. *ſ.* 5.

4. In order to prevent robberies, it is enacted by the 13 *Ed.* 1. *ſt.* 2. *c.* 5. That highways leading from one market town to another ſhall be enlarged, ſo that there be neither dyke, tree, nor buſh, within 200 foot on each ſide of the way. Except aſhes and great trees. And if by default of the lord that will not avoid the dyke, underwood, or buſhes, any robbery be done therein, the lord ſhall be anſwerable for the felony; and if murder be done, the lord ſhall make a fine at the king's pleaſure. And if the lord be not able to fell the underwoods, the country ſhall aid him. And if a park be taken from the highway, it is requiſite that the lord ſhall ſet his park 200 foot from the highways, or that he make ſuch a wall, dyke, or hedge, that offenders may not paſs nor return to do evil.

XXII. Lands given to repairing highways. Charities.

Where any lands have been, or ſhall be given for the maintenance of cauſeys, pavements, highways, and bridges, the truſtees ſhall let them to farm, at the moſt improved yearly value, without fine; and the juſtices in open ſeſſions ſhall inquire by ſuch ways and means as they think fitting, into the value of ſuch lands; and if the truſtees have been faulty, they may order the improvement and imployment of the profits thereof, according to the direction of the donor. (Except lands given for the ſaid uſes to colleges or halls, which have viſitors of their own.) 22 *C.* 2. *c.* 12. *ſ.* 2.

XXIII. Aſſeſſment for the repair of highways. Aſſeſſment.

Where the juſtices at the general or quarter ſeſſions, ſhall be fully ſatisfied, that the highways within any pariſh, townſhip, or place, cannot otherwiſe be ſufficiently repaired, an aſſeſſment upon all the inhabitants, owners, and occupiers of lands, tenements, and hereditaments, or any perſonal eſtate, uſually rateable to the poor, ſhall be made, levied, collected, and allowed by ſuch perſons, and in ſuch manner, as the ſaid juſtices by their order at ſuch ſeſſions ſhall appoint: And the money thereby raiſed, ſhall be employed and accounted for, according to the orders and directions of the ſaid juſtices, towards repairing and ſupporting the ſame: And the ſaid aſſeſſment ſhall be levied by diſtreſs and ſale of the goods of every perſon ſo aſſeſſed (not paying the ſame within ten days after demand). Provided, that no ſuch aſſeſſment in any one year, ſhall exceed 6*d.* in the pound of the yearly value of any lands, houſes, tenements, and hereditaments ſo aſſeſſed, nor the rate of 6*d.* for 20*l.* in perſonal eſtate. 3 *W.* *c.* 12. *ſ.* 17, 18.

And on application of the ſurveyor, the ſaid juſtices may, if they ſee fitting, cauſe ſuch aſſeſſment to be made, altho' the ſix days work hath not been performed; but the ſaid aſſeſſment ſhall not excuſe the ſix days labour. 1 *G.* *ſt.* 2. *c.* 52. *ſ.* 6.

T. 6 *G.* *K.* and the inhabitants of *Stroud.* An order for impoſing a rate towards the repairs of the highways, was quaſhed for two exceptions: 1. Becauſe it did not appear but that the ſtatute labour was ſufficient. And, 2. Becauſe only the *occupiers of land* are charged, whereas others are equally liable. *Str.* 315. In all ſuch caſes, it is beſt to purſue the ſtatute; and the order therefore in this caſe ſhould have ſet forth, not that *the ſtatute labour was inſufficient*, but that the court was *fully ſatisfied that the highways could not otherwiſe be ſufficiently repaired*; and they ſhould have ordered an aſſeſſment *upon all the inhabitants, owners, and occupiers of lands, tenements, and hereditaments, or any perſonal eſtate*, uſually rateable to the poor, within the pariſh or diſtrict.

XXIV. In

Pariſh contributory.

XXIV. In what caſe the whole pariſh ſhall be contributory.

If any innſhip, liberty, precinct, or vill, that was to repair its own highways, ſhall have levied 6*d.* in the pound, and employed the ſame in repairing, and yet the ſaid highways are not ſufficiently repaired, the juſtices at their ſpecial ſeſſions may order the whole pariſh to contribute towards the repairing thereof. 7 & 8 *W.* *c.* 29. *ſ.* 4.

XXV. Further proviſion for the ſame, by the common law.

Where the ſtatute proviſions ſhall fall ſhort, the common law to come in aid.

It is no excuſe for the inhabitants of a pariſh, being indicted at common law, for not repairing the highways, that they have done all that is required of them by ſtatute; for ſince theſe ſtatutes are wholly in the affirmative, and made in aid of the common law, and to ſupply the defects thereof, they ſhall not be conſtrued to abrogate any proviſion thereby made for theſe purpoſes. 1 *Haw.* 204. So that at all events, the pariſh may be compelled to make their ways good.

XXVI. Preſentment or indictment (C) *of highways in general.*

Indictment to be within the county.

1. All defects of repairs of highways, ſhall be preſented in the county where they lie, and not elſewhere. 22 *C.* 2. *c.* 12. *ſ.* 4.

Muſt ſhew it to be a highway.

2. And the indictment muſt ſhew, that the way is common to all the king's people; for which cauſe it hath been reſolved, that an indictment for a nuſance to a horſeway, without adding that it is a highway, is naught. 1 *Haw.* 220.

Note; The expreſſion for *the king's highway*, when the indictments were in *Latin*, was *alta via regia*; which a modern author, in his form of an indictment, tranſlates *a royal highway*.

Muſt ſhew the places from and to which it leads.

3. It is ſafeſt in the indictment to ſhew both the place from which, and alſo the place to which the way ſuppoſed to be out of repair doth lead; yet exceptions for want of ſuch certainty have ſometimes been diſallowed: however it ſeems certain, that there is no neceſſity to ſhew that a highway leads to a market town, becauſe every highway leads from town to town. 1 *Haw.* 219.

Place where.

4. It is neceſſary in the indictment expreſly to ſhew, in what place the nuſance complained of was done; for which cauſe, an indictment for ſtopping a way at *D.* leading from *D.* to *C.* is not good, for it is impoſſible that a way leading from *D.* ſhould be in *D.* and no other place is mentioned. 1 *Haw.* 219.

Need not name the inhabitants.

5. It is ſaid, that a preſentment that a highway in ſuch a place is decayed, by the defaults of the inhabitants of ſuch a town is good, without naming any perſon in certainty. 1 *Haw.* 220.

6. But

6. But it hath been adjudged, that an indictment againſt particular perſons, muſt ſpecially charge them every one. 1 *Haw.* 220. Indictment againſt particular perſons.

7. It ought alſo certainly to ſhew, to what part of the highway the nuſance did extend, as by ſhewing how many foot in breadth it contained; or otherwiſe the defendant will neither know of the certainty of the charge, againſt which he is to make his defence, neither will the court be able from the record to judge of the greatneſs of the offence, in order to aſſeſs a fine anſwerable thereunto; and it hath been reſolved, that the place is not ſufficiently aſcertained by ſhewing, that it contained ſo many foot in length, and ſo many in breadth, *by eſtimation*. 1 *Haw.* 220. Muſt ſet forth how much is out of repair.

8. Alſo, the fact muſt be expreſſed in ſuch proper terms, that it may clearly appear to the court to have been a nuſance; and for this cauſe it hath been reſolved, that a preſentment for *diverting* a highway is not good, becauſe a highway cannot be diverted, but muſt always continue in the ſame place where it was, howſoever it may be *obſtructed*, and a new way made in another place. 1 *Haw.* 220. Muſt ſet forth the fact clearly.

9. It ſeems to be implied in the conſtruction of all penal ſtatutes, that no one ought to be convicted of any offence againſt them without having notice of the accuſation made againſt him, and an opportunity of defending himſelf. And therefore it ſeems certain, that generally no one ought to be puniſhed for any of the abovementioned offences, without being called upon to anſwer for himſelf, and having liberty to traverſe the matters alledged againſt him. 1 *Haw.* 219. Perſons indicted to have notice.

10. Upon an indictment againſt a pariſh for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be againſt a particular perſon, he may give evidence that others ought to repair it. 3 *Salk.* 183. *Comb.* 396. Plea of not guilty.

11. And the defendants ought not to plead that they ought not to repair, without ſhewing who ought. 1 *Haw.* 220. Plea to charge others.

12. And Mr. *Hawkins* ſays, that if a particular perſon be bound to repair a highway, either by incloſure or by preſcription, the pariſh cannot take advantage of it upon the plea of not guilty, but ought to ſet forth their diſcharge in a ſpecial plea. 1 *Haw.* 203. Special plea.

13. After conviction, or upon a demurrer, or confeſſion, any one may take exceptions to ſuch indictment or preſentment in any court for the want of legal form; but the court in diſcretion will very rarely ſuffer a man to take ſuch exceptions, before ſuch conviction or confeſſion, without a certificate and affidavit that the ways are in good repair. 1 *Haw.* 219. Exceptions to the form of the indictment.

14. And the defendants ſhall not be diſcharged by ſubmitting to a fine, but a *diſtringas* ſhall go *in infinitum* till they repair. 1 *Haw.* 220. Fine no diſcharge.

XXVII. Preſentment of a juſtice on his own view. Preſentment on view.

By the 5 *El. c.* 13. Every juſtice of the peace ſhall have authority on his own proper knowledge, in the open general ſeſſions,

to

to make preſentment (D) of any highway not well and ſufficiently repaired, or of any other default contrary to the ſtatute of the 2 & 3 *P. & M.* And every ſuch preſentment made by a juſtice upon his own knowledge ſhall be as good, and of the ſame force, ſtrength, and effect in the law, as if the ſame had been preſented, found, and adjudged by the oath of 12 men: And for every ſuch default ſo preſented, the juſtices ſhall immediately at the ſaid general ſeſſions, have authority to aſſeſs ſuch fines as to them ſhall be thought meet: Saving every perſon that ſhall be touched by any ſuch preſentment, to have his lawful traverſe to the ſame preſentment, as they may have upon any indictment of treſpaſs or forcible entry. *ſ.* 9.

Hereupon it hath been obſerved by Mr. *Dalton* and others, that the juſtices at the ſaid ſeſſions may aſſeſs the fine upon ſuch offenders, and that in the abſence of the party, without calling him to anſwer by any proceſs: Which opinion ſeeming contrary to natural juſtice, and to the privilege of an *Engliſhman* as eſtabliſhed by the great charter, perhaps hath not been ſufficiently weighed by all the authors who have adopted it; and there ſeems to be the more ground for this ſuſpicion, in that moſt of them do quote Mr. *Crompton* for this opinion, one after another, in a wrong page; and in fact Mr. *Crompton* ſaith no ſuch thing, but rather ſeems to incline to the contrary opinion; his words are theſe,——A preſentment at the ſeſſions by a juſtice of the peace, upon his own knowledge, of ſuch a highway not repaired, is as a preſentment, of 12 men, upon which the juſtices may aſſeſs a fine, by 5 *El. c.* 13. and 3 *P. & M. c.* 8 but the party may have a traverſe to the preſentment by the ſaid ſtatute of 5 *El. Comp.* 110.

And Mr. *Hawkins*, obſerving upon this opinion, ſaith thus: It hath been holden, in the expoſition of this clauſe, that the party againſt whom ſuch a preſentment ſhall be made, cannot take any traverſe to the want of repair of ſuch highway; but it is agreed, that he may plead that ſome other perſon ought to repair the ſame, and traverſe his own obligation to do it. Neither can I ſee upon what reaſon the former opinion is grounded, that he cannot traverſe the want of repair of ſuch highway; for ſince the ſtatute expreſly ſaves to every perſon who ſhall be touched by any ſuch preſentment, his lawful traverſe to the ſame, as he might have to an indictment of treſpaſs or forcible entry; and ſince it ſeems clear, that every defendant to any ſuch indictment (*viz.* of treſpaſs or forcible entry) may traverſe the whole matter alledged againſt him, why may he not as well have the ſame benefit in the preſent caſe? And tho' the record of a juſtice of the peace, acting by force of any ſtatute, as a judge be not traverſable, yet it ſeems hard by ſuch a general rule, to make any record not traverſable, which by the expreſs words of the ſtatute which authorizes the making of it is allowed to be traverſable. 1 *Haw.* 217.

To which may be added, that the ſtatute doth not ſay, that ſuch preſentment ſhall be of like force as if found by the oaths of both juries (that is to ſay, both of the grand and traverſe jury), but only that it ſhall be of the like force, as if it had been preſented,

ſented, found, and adjudged, by the oath of 12 men; which can only intend, that it ſhall be of equal force with the preſentment of a grand jury.

So that the ſenſe of the ſtatute perhaps may be no more than this; that if the party is preſent in court, and ſubmits to the preſentment, the juſtices may immediately aſſeſs a fine: but he may traverſe the preſentment if he will; and if upon the traverſe he ſhall be acquitted, then there can be no foundation for fining him. But if he is abſent, it is reaſonable that he be firſt ſummoned to anſwer for himſelf; and if he ſhall afterwards be convicted either by confeſſion, or by verdict, then will be the time to ſet the fine. Otherwiſe, the aſſeſſing of a fine, in this and the like caſes, ſeemeth to be premature; beginning where the court ſhould end; being in effect the giving of judgment before they have heard the parties; and it is poſſible the defendant may be acquitted, and then the fining of him is ridiculous.——Beſides, that the court cannot ſo well judge beforehand of the *quantum* of the fine, which ought to be proportioned according to the demerits of the offence; of which they can by no means judge, until the matter hath come before them in a legal courſe of proceeding.

XXVIII. Power of the leet to puniſh offences. Leet.

1. The ſteward of the leet hath power given him, to inquire by the oaths of the ſuitors, of offences againſt the aboveſaid ſtatutes of 2 & 3 *P. & M. c.* 8. and 18 *El. c.* 10. and to aſſeſs fines and amerciaments for the ſame.

2. And he who is preſented in a court leet, for any offence relating to the highways, can only traverſe it ſo far as it concerns his freehold; as by charging him with being bound to ſuch repairs in reſpect of the tenure of his lands; for which purpoſe he may remove it by *certiorari* into the king's bench, and there traverſe it. 1 *Haw.* 219.

XXIX. Fines and the diſpoſal thereof. Fines.

1. All the *penalties and forfeitures* by any ſtatute (as hath been obſerved in the preamble to this title) are veſted in the informer, by the 24 *G.* 2. *c.* 43. But the *fines* upon an *indictment or preſentment* ſeem to continue as before.

2. Concerning which it is enacted, by the 3 *W. c.* 12. that no fine ſhall be returned into the exchequer, but ſhall be levied and paid into the hands of the ſurveyors, to be applied towards the repair of the highways. *ſ.* 14.

3. And if any fine impoſed for not repairing, ſhall be levied on any one inhabitant, or more; ſuch inhabitant ſhall make complaint to the juſtices at the ſpecial ſeſſions, and the ſaid juſtices or any two of them may by warrant under their hands and ſeals cauſe a rate to be made for reimburſing him; which rate ſo made, and confirmed by two juſtices, ſhall be collected and levied by the ſurveyor, by diſtreſs; who ſhall within one month after confirming the rate pay the ſame to ſuch inhabitant. 3 *W. c.* 12. *ſ.* 14.

4. And

4. And if any fine ſhall be miſapplied by any perſon, he ſhall on conviction thereof at the ſpecial ſeſſions, by proof upon oath, forfeit 5 *l.* to the informer, by diſtreſs. 1 *G. ſt.* 2. *c.* 52. *ſ.* 5.

Account.

XXX. Surveyor's account.

The ſurveyor before he ſhall be diſcharged from his office, ſhall at ſome ſpecial ſeſſions give an account upon oath of all money that has come to his hands, which ought to be employed in amending of the highways, and how he hath diſpoſed thereof; and if any ſhall remain in his hands, he ſhall deliver the ſame to his ſucceſſor, and in caſe of failure, he ſhall forfeit double value of what ſhall be adjudged to be in his hands by the ſaid juſtices, to be levied by diſtreſs, by warrant of two juſtices of the diviſion, and in default thereof, of any neighbouring juſtices. 3 *W. c.* 12. *ſ.* 9.

For which account or oath no fee ſhall be taken. 1 *G. ſt.* 2. *c.* 52. *ſ.* 11.

Appeal.

XXXI. Appeal.

1. If any perſon is aggrieved with any aſſeſſment, or other act by the juſtices, done on the ſtatute of 3 *W. c.* 12. he may appeal to the ſeſſions, whoſe order therein ſhall bind all parties. *ſ.* 19.

2. And perſons aggrieved by any thing done on the act of 1 *G. ſt.* 2. *c.* 52. (except thoſe who ſhall neglect to ſcour their ditches, and carry away the earth taken out of them, or who ſhall not carry away ſtone, timber, ſtraw, or dung left in the highways, or who ſhall not remove any other annoyances by watercourſes) may appeal to the next ſeſſions, whoſe order ſhall conclude and bind all perſons. *ſ.* 12.

3. Other appeals, where the law admits of them, are annexed in the particular offences.

XXXII. Certiorari.

By the 22 *C.* 2. *c.* 12. it is provided, that no preſentment or indictment for the defect of repairs of highways, ſhall be removed by *certiorari* or otherwiſe, till after traverſe and judgment. *ſ.* 4.

And by the ſtatute of the 3 *W. c.* 12. No preſentment, indictment, or order made upon that act, ſhall be removed at all by *certiorari*, into any other court. *ſ.* 23.

But by the 5 *W. c.* 11. If the right or title to repair come in queſtion, a *certiorari* (upon affidavit made of the truth thereof) may be granted to remove the ſame into the king's bench; provided that the party proſecuting the *certiorari*, ſhall (before the allowance thereof) find two manucaptors who ſhall enter into recognizance of 20 *l.* before a juſtice of the peace, that he ſhall at his own coſts and charges procure the iſſue to be tried at the next aſſizes, as in the caſe of other *certioraries*. *ſ.* 6.

And it hath been reſolved, that if the quarter ſeſſions, under pretence of the juriſdiction given them by theſe ſtatutes, take upon them

them to do a thing manifeſtly exceeding their authority, as to make an order on ſurveyors to make up their accounts before a ſpecial ſeſſions, their proceedings may be removed by *certiorari* into the king's bench, and there quaſhed; for the quarter ſeſſions have no manner of power given them, to intermeddle originally with ſuch accounts, but only by way of appeal. 1 *Haw.* 218.

And, *M.* 3 *G.* 2. *K.* and *Greenhaw.* A *certiorari*, for the like reaſon, was granted to remove an indictment for not doing the ſtatute labour; for the ſtatute hath appointed another method of proceeding againſt ſuch offender, and not by indictment. *Str.* 849.

M. 6 *G.* 2. *K.* and *Eckerſhall.* An order was made on the 7 & 8 *W. c.* 29. for the pariſh at large to repair the highways, the 6*d.* in the pound levied on the townſhip not being ſufficient. And a *certiorari* being moved for, it was objected, that the 3 *W. c.* 12. had taken it away. To which it was anſwered, that this is an order founded on a ſubſequent law. But by the court, They muſt both be taken together: the rate muſt be made in aid of the townſhip, by virtue of the former law. So a *certiorari* was denied. *Str.* 944.

E. 4 *G.* 2. *K.* and the inhabitants of *Hamworth.* Upon motion to quaſh a *certiorari* to remove an indictment againſt the defendants at ſeſſions, for not repairing a bridge; it was inſiſted, that by the 1 *An. c.* 18. the *certiorari* is taken away. To which it was anſwered, and reſolved by the court, that this act extended only to bridges where the county is charged to repair; and that where a private perſon or pariſh is charged, and the right will come in queſtion, the 5 *W. c.* 11. had allowed the granting a *certiorari*. And therefore they refuſed to quaſh. *Str.* 900.

E. 17 *G.* 2. *K.* and *Farewell.* The proſecutor of an indictment for a nuſance in the highway, took out a *certiorari*; and the defendant moved to quaſh it, there being no affidavit made according to the 5 *W. c.* 11. nor any recognizance given according to former ſtatutes concerning *certioraries*. But the court, on conſidering theſe acts, held, that they related only to *certioraries* applied for by defendants, and not to one for the king, as this was. And many precedents were ſhewed of *certioraries* for a proſecutor taken out in the manner this was. And the *certiorari* was allowed. *Str.* 1209.

XXXIII. Turnpikes.

After having firſt premiſed, that by the 28 *G.* 2. *c.* 17. it is provided, that every proſecutor or informer may ſue for any forfeiture or penalty impoſed by any act relating to turnpike roads, in the manner directed by ſuch act, or in any of the courts at *Weſtminſter* in manner following, *viz.* if it is a pecuniary penalty, by action of debt, in which it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of ——— being forfeited by an act intituled, *An act to amend an act made in the 26th year of the reign of his preſent majeſty*, intituled, *An act for the amendment and preſervation of*

the publick highways and turnpike roads of this kingdom; *and for the more effectual execution of the laws relating thereto*; and if it is a horſe, beaſt, or other goods, by an action of trover, in which the value thereof ſhall be given in damages, without any proof of any ſeizure or demand: But only that there ſhall be one recovery for one offence *bona fide*; and no action by this act to be brought in the courts at *Weſtminſter*, but in ſix months: *ſ.* 15, 16. It is judged proper under this head (which is at length become a little perplexed) to proceed in the following manner:

Qualification of turnpike truſtees.

1. No perſon ſhall be qualified to act as a turnpike truſtee, unleſs he ſhall be in his own right, or in right of his wife, in the actual poſſeſſion or receipt of the rents and profits of lands of the clear yearly value of 40*l.* or poſſeſſed of or intitled to perſonal eſtate alone, or real and perſonal eſtate together, to the value of 800*l.* or ſhall be heir apparent of a perſon poſſeſſed of an eſtate in land of the clear yearly value of 80*l.* and unleſs he ſhall (not being ſuch heir apparent) before he acts as truſtee, take and ſubſcribe the oath following before two truſtees, *viz. I* A. B. *do ſwear, that I truly and* bona fide *am in my own right, or in right of my wife, in the actual poſſeſſion and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of* 40 l. *or poſſeſſed of, or intitled to a perſonal eſtate alone, or real and perſonal eſtate together, to the value of* 800 l. *So help me god.* And if any perſon ſhall act contrary hereto, he ſhall forfeit 50*l.* to him who ſhall ſue. 28 *G.* 2. *c.* 17. *ſ.* 13.

Note; This is one general qualification for all turnpike truſtees. By the ſeveral particular turnpike acts, other qualifications are uſually appointed, all which ſhall ſtand, where the eſtate is limited above what is here directed; only this clauſe provides, that no turnpike truſtee whatſoever ſhall have leſs eſtate than is here limited.

Alehouſekeepers not to be turnpike officers.

2. No perſon keeping a victualling houſe, alehouſe, or other houſe of publick entertainment, ſhall be capable of any place of truſt or profit under turnpike truſtees, or of farming the tolls. 26 *G.* 2. *c.* 30. *ſ.* 20.

Erecting a turnpike gate without lawful power.

3. If the truſtees ſhall erect or continue any turnpike-gate, where they have no power ſo to do; the juſtices in ſeſſions, on complaint thereof, may finally determine the ſame in a ſummary way, and order the ſheriff to remove it. 5 *G.* 2. *c.* 33. *ſ.* 4. 8 *G.* 2. *c.* 20. *ſ.* 17.

Pulling down turnpike gates.

4. By the 8 *G.* 2. *c.* 20. If any perſon ſhall either by day or night, wilfully or maliciouſly pull down, cut down, pluck up, throw down, level, or otherwiſe deſtroy any turnpike gate, poſt, rail, wall, chain, bar, or other fence, belonging to any turnpike gate, or any other chain, bar, or fence ſet up to prevent paſſengers from paſſing by without paying toll, or any houſe erected for the uſe of any turnpike gate, or forcibly reſcue any perſon in cuſtody for any the ſaid offences, he ſhall be guilty of felony without benefit of clergy. *ſ.* 1.

And the ſaid offences may be tried in any adjacent county. *ſ.* 3.

And by the 5 G. 2. c. 33, which made the like offences felony and tranſportation, the charges of proſecution ſhall be paid out of the tolls.

But the attainder ſhall not work corruption of blood, nor forfeiture of lands or goods. 8 G. 2. c. 20. ſ. 4.

And if any perſon, guilty of any the ſaid offences, and being out of priſon, ſhall diſcover and cauſe to be apprehended, one or more perſons who ſhall have committed any of the ſaid felonies, ſo as he ſhall be convicted, he ſhall have a pardon. ſ. 5.

And the hundred ſhall anſwer damages, not exceeding 20 l. as in caſes of robbery; to be ſued for in the name of the clerk of the peace, without naming him; the ſaid damages to be applied as the tolls are. ſ. 6, 8.

But if an offender is convicted in 12 months, the hundred ſhall not be liable, but if they have paid ſuch damages, the ſame ſhall be repaid to them out of the tolls. ſ. 7.

Alſo no action for ſuch damages ſhall be brought, unleſs information on oath be made thereof within ſix days, before a juſtice in or near the hundred. ſ. 9.

Nor unleſs the ſuit be commenced in ſix months. ſ. 10.

Miſuſing the collector of the tolls.

5. If any perſon ſhall aſſault or threaten the collector of the toll, or forcibly paſs through without paying toll, or ſhall forcibly carry away or detain him ſo as he ſhall not be able to return to his duty for three days; he ſhall, on conviction (after ſummons) by oath of one witneſs, before two juſtices near the diviſion, forfeit 5 l. by warrant of the ſaid juſtices, by diſtreſs; for want of diſtreſs, to be committed by them to gaol for ſix months, unleſs he ſhall be ſooner diſcharged by the quarter ſeſſions; and for the ſecond or third offence, he ſhall forfeit 10 l. in like manner, and for want of diſtreſs ſhall be impriſoned for a year, and before he is diſcharged ſhall give ſecurity at the general quarter ſeſſions for his behaviour for ſeven years. 8 G. 2. c. 20. ſ. 11.

And the collector of the toll may ſeize and detain any perſon guilty of the offences before mentioned, and carry him before a juſtice without a warrant; who ſhall bind him over to appear at the next petty ſeſſions for the diviſion, or commit him till he finds ſecurity to appear. ſ. 12.

But perſons aggrieved by any order of two juſtices as aforeſaid, may appeal to the next general quarter ſeſſions; and if the court ſhall think that reaſonable time of notice was not given, they may adjourn the appeal to the next quarter ſeſſions; and may award coſts to either party. ſ. 15.

And no *certiorari* ſhall be granted to remove any thing on this act, out of the county, into any other court. ſ. 16.

And if an action is brought againſt any on this act, it ſhall be laid in the proper county; and the defendant, if he recovers, ſhall have treble coſts. ſ. 18.

Breadth of the wheels on turnpike roads.

6. It ſhall not be lawful, for any waggon, wain, cart, or wheel carriage, to be drawn on any turnpike road, unleſs the fellies of the wheels be nine inches broad (except as hereafter excepted); on pain that the owner thereof ſhall forfeit 5 l. half to him who ſhall in-

form and ſue, and half to the truſtees for repairing the turnpike road: to be recovered in the courts at *Weſtminſter* with treble coſts; or before two juſtices where the offence ſhall be committed, who may on complaint in ten days, ſummon the party, and the witneſſes on either ſide; and if the party ſhall not appear on ſuch ſummons, then on oath of the fact committed they may iſſue their warrant for apprehending him within their juriſdiction; and upon his appearance or contempt (on proof of notice given) they may proceed; and if he ſhall be convicted, either by view of the juſtices or any of them, or on ſuch information, or confeſſion, they may iſſue their warrants to levy the penalty with coſts of proſecution, by diſtreſs, and if not redeemed in five days, by ſale; and where goods of the offender cannot be found, may commit him to priſon for three months, or till payment. Perſons aggrieved may appeal to the next general ſeſſions, giving 14 days notice; and in five days after ſuch notice, entring into recognizance with two ſureties before one juſtice, to try the appeal: and the ſeſſions may mitigate the penalty; and may give coſts, and by their order or warrant cauſe the coſts to be levied by diſtreſs of the goods of the party appealing, and for want of ſufficient diſtreſs may commit him to the common gaol, not exceeding two months, or till payment of ſuch coſts; and if the party ſhall live in another diſtrict, any juſtice there, on a copy of the order proved upon oath, may by his warrant cauſe the ſame to be levied by diſtreſs, and if no ſufficient diſtreſs can be had, ſhall commit him to the common gaol not exceeding two months, or till payment. 26 *G.* 2. *c.* 30. *ſ.* 1, 16, 17.

Or otherwiſe ſuch owner ſhall forfeit any one of the horſes or beaſts, not being the thill horſe, together with the accoutrements, to the ſole uſe of him who ſhall ſeize or diſtrain the ſame. And the perſon ſeizing ſhall deliver ſuch diſtreſs to the conſtable or ſome other pariſh officer in or near the place where the ſeizure ſhall be; who ſhall receive and keep the ſame, till the perſon ſeizing ſhall make proof on oath before a juſtice of the offence; which juſtice ſhall thereupon iſſue his precept to ſuch conſtable or pariſh officer immediately to deliver the ſame to the ſeizor, to and for his own uſe and benefit, paying ſuch reaſonable charges for keeping and ſecuring the ſame, as the juſtice ſhall direct; but if no ſuch proof be made in three days, the diſtreſs ſhall be returned to the owner, he paying reaſonable charges for the keeping and ſecuring the ſame. And if any perſon ſhall attempt to obſtruct the diſtraining thereof, he ſhall forfeit 10 *l.* to be recovered and diſpoſed as above. *ſ.* 2, 13.

And if any perſon ſhall *drive* with wheels of leſs gage, or with more than the number of eight horſes in four wheel carriages, or more than five in two wheel carriages (except ſuch as are carrying one piece of timber, or one ſtone, or block of marble); the conſtable, or ſurveyor of the highways, or any other inhabitant of the pariſh or place where the offence ſhall be committed, and the ſurveyor of the turnpike, or any perſon appointed by five truſtees, may apprehend and take ſuch driver before a juſtice; and on conviction by confeſſion, or oath of one witneſs, he ſhall forfeit 5 *l.*

and if he have no goods whereon immediate diſtreſs may be had, the juſtice may commit him to the houſe of correction for one month, or till paid. *ſ.* 14.

By the wheel being nine inches broad is to be underſtood, that the ſole or bottom of the fellies ſhall be nine inches broad, from ſide to ſide, at the leaſt, and flat and even from ſide to ſide, as near may be. 28 *G.* 2. *c.* 17. *ſ.* 5.

And any two turnpike truſtees, by writing under their hands, may order the fellies to be meaſured at the turnpike gate; and if any perſon ſhall attempt to obſtruct the meaſuring thereof, he ſhall forfeit 10 *l.* in like manner. 26 *G.* 2. *c.* 30. *ſ.* 11, 13.

But if it ſhall appear that the fellies when firſt made were of nine inches, and are narrowed by wearing, no penalty ſhall be incurred if they meaſure full eight inches. *ſ.* 12.

And the truſtees, or five of them, ſhall from time to time, cauſe turnpike roads to be levelled, and put in condition for the uſe of travellers and carriages. 28 *G.* 2. *c.* 17. *ſ.* 6.

And no greater toll on turnpike roads ſhall be demanded for carriages having wheels nine inches broad, than is required by the reſpective turnpike acts to be paid for waggons or other four wheel carriages, drawn by five or four horſes or beaſts. 26 *G.* 2. *c.* 30. *ſ.* 7.

Moreover by the 28 *G.* 2. *c.* 17. For three years from *June* 24. 1755. but no longer, all waggons, wains, carts, and carriages, for all goods and merchandize, loaden or unloaden, having the fellies nine inches broad, may paſs through any turnpike gate without paying toll. *ſ.* 1.

And alſo the horſes drawing the ſame ſhall for the ſaid three years be exempted from tolls, as the carriages are. *ſ.* 10.

But this ſhall not extend to any chaiſe marine, coach, landau, berlin, chaiſe, or calaſh; nor to any waggon drawn by leſs than five horſes or beaſts: nor wain, cart, or other two wheel carriages, drawn by leſs than four. 26 *G.* 2. *c.* 30. *ſ.* 3.

But by the 28 *G.* 2. *c.* 17. All waggons, wains, *or other four wheel carriages*, not being common ſtage waggons or carriages (though the fellies are not of nine inches or ſix inches) may paſs on any turnpike road, with any number of horſes or beaſts of draught not exceeding five horſes or beaſts of draught; and if any owner or driver ſhall travel with more, ſuch owner ſhall forfeit 5 *l.* by diſtreſs, by warrant of three truſtees or one juſtice in or near the place where the offence ſhall be committed; and if any *driver* ſhall offend herein, ſuch juſtice ſhall commit him to the houſe of correction for one month. *ſ.* 8.

But by a ſubſequent clauſe in the ſame ſtatute, any waggon, wain, or other four wheel carriage, not having the fellies nine inches broad, may paſs on any turnpike road, provided it be not drawn by more than ſix oxen or neat cattle in pairs, and two horſes; or eight oxen in pairs, with one horſe; And any cart or other two wheel carriage, not having the fellies of the breadth aforeſaid, may paſs, provided it be not drawn by more than ſix oxen or neat cattle in pairs, and one horſe; or four oxen in pairs, and two horſes. *ſ.* 9.

Alſo by the ſaid act of the 28 *G.* 2. *c.* 17. All waggons having the fellies ſix inches broad, may paſs through any turnpike gate, with ſix horſes; and all carts and other carriages having the fellies ſix inches broad, with four horſes; without paying more toll, than is paid for waggons now drawn by four, and carts drawn by three horſes, or for the horſes drawing the ſame. *ſ.* 2.

Note; By the general clauſe abovementioned, in the ſtatute of the 28 *G.* 2. *c.* 17. *ſ.* 8. which enacteth, that if any owner or driver ſhall travel with more than five horſes, in any waggon, wain, *or other four wheel carriage*, with fellies leſs than nine or ſix inches broad reſpectively, he ſhall be liable to a penalty; it ſeemeth that a coach or other like carriage with ſix horſes cannot paſs, without incurring ſuch penalty: In former acts, there is a clauſe of exemption for coaches, landaus, berlins, chaiſes, and ſuch like, which by miſtake ſeemeth to have been omitted out of this act.

And to prevent the tolls from being diminiſhed by the exemption of nine inch wheels, it is enacted, that for three years from *June* 24. 1755. and no longer, the turnpike truſtees, or five of them, may cauſe to be taken and additional toll, if they ſhall find the ſame neceſſary on conſidering the ſtate of their reſpective tolls, not exceeding one fourth part more than the tolls payable by the reſpective acts, for every coach, caravan, chaiſe marine, landau, berlin, chariot, chaiſe, chair, and calaſh, and for all waggons, wains, carts, and other carriages, not having the fellies nine inches or ſix inches broad reſpectively. 28 *G.* 2. *c.* 17. *ſ.* 3.

And that the ſaid leſſening of the tolls may not be prejudicial to perſons who have lent money on the tolls; every turnpike act made this ſeſſion of parliament or before, ſhall continue for five years from its expiration. *ſ.* 4.

And where the toll on horſes or other beaſts drawing or paſſing through any turnpike gate, doth not amount to more than $\frac{1}{2}$ *d.* for every horſe drawing any wheel carriage, not having the fellies of nine inches or ſix inches, or to more than 1 *d.* for two horſes, or to more than 1 $\frac{1}{2}$ *d.* for three horſes drawing ſuch carriage; the truſtees, or five of them, may if they find it neceſſary on conſidering the ſtate of their tolls, collect double the former tolls in caſe they do not exceed $\frac{1}{2}$ *d.* and 1 $\frac{1}{2}$ *d.* in caſe they do not exceed 1 *d.* and 2 *d.* in caſe they do not exceed 1 $\frac{1}{2}$ *d*; and may collect the additional toll directed to be taken by this act, in caſes where the preſent toll amounts to 2 *d.* or more upon the horſes drawing any carriage, in ſuch manner as if ſuch toll were laid upon the carriage; any thing in this or in any former act notwithſtanding. *ſ.* 11.

Weighing engines, with the additional toll for over weight.

7. The turnpike truſtees, or any five of them, *may* cauſe to be erected (on any part of the turnpike road, 21 *G.* 2. *c.* 28. *ſ.* 1.) a crane, machine, or engine, for the weighing of carts, waggons, or other carriages, for the conveying of goods; and by writing ſigned by them, may order ſuch carriages which paſs through ſuch gate (except as hereafter excepted) to be weighed with their loading; and impower any perſon to take, over and above the other

toll,

toll, 20 *s.* for every hundred weight above 60, to be levied as the other tolls. 14 *G.* 2. *c.* 42. *ſ.* 1, 3.

And if it is within 30 miles of *London*, and the tolls amount to 150 *l.* a year, they *ſhall* in ſome convenient place, cauſe ſuch crane or engine to be erected. 24 *G.* 2. *c.* 43. *ſ.* 6, 7.

But this ſhall not extend to carts, waggons, or other carriages, employed only about huſbandry, or carrying of only cheeſe, butter, hay, ſtraw, corn unthreſhed, or chalk, or any one ſtone, block of marble, or piece of timber, nor to caravans, or the covered carriages of noblemen and gentlemen for their private uſe, or ſuch timber, ammunition, or artillery, as ſhall be for his majeſty's ſervice. 14 *G.* 2. *c.* 42. *ſ.* 5.

Alſo it ſhall notwithſtanding, be lawful for any carriage loaden with or carrying one tree or piece of timber, or one ſtone, or block of marble only, having the fellies of the wheels nine inches broad, to paſs on any turnpike road, with any number of horſes or beaſts; and for any waggon, or other four wheel carriage, having the fellies nine inches broad, to paſs on any turnpike road, with any number of horſes or beaſts, not exceeding eight; and for any cart or other two wheel carriage, having the fellies nine inches broad, with any number not exceeding five; without being liable to be weighed, or to pay the additional toll of 20 *s.* 26 *G.* 2. *c.* 30. *ſ.* 4.

And by the aforeſaid clauſe of the 28 *G.* 2. abovementioned, All waggons, wains, carts, and carriages, for all goods and merchandize, loaden or unloaden, having the fellies nine inches broad, may for the ſpace of three years from *June* 24. 1755. paſs through any turnpike gate without paying any tolls at all. *ſ.* 1.

And if any collector of the tolls, at any gate where or near to which any engine for weighing of carriages ſhall be erected, ſhall ſuffer any cart, waggon, or carriage aforeſaid, not having the fellies nine inches broad to paſs without weighing; he ſhall, on conviction before three truſtees, or one juſtice, on the oath of one witneſs, be committed to the houſe of correction to hard labour for one month. 28 *G.* 2. *c.* 17. *ſ.* 7.

And if any perſon ſhall hinder, or attempt to hinder, the weighing, or ſeizing any diſtreſs for ſuch additional toll, or ſhall reſcue the ſame, or uſe any violence to any perſon concerned in ſuch weighing or ſeizure; he ſhall, on oath of one witneſs, before one juſtice where the offence ſhall he committed, or the offender ſhall dwell, be committed to gaol for three months, and forfeit 10 *l.* by diſtreſs; and if not paid in three days, to be ſold. 14 *G.* 2. *c.* 42. *ſ.* 4.

8. If any perſon ſhall unload any goods, before the ſame ſhall come to the weighing engine, in order to avoid paying the 20 *s.* or ſhall after it has paſſed the engine, load thereon any goods taken from any horſe or other carriage belonging to ſuch waggoner, he ſhall forfeit 20 *l.* in like manner. 21 *G.* 2. *c.* 28. *ſ.* 2. Unloading goods to avoid the tolls.

And more generally, by the 28 *G.* 2. *c.* 17. If any perſon ſhall unload any goods from any carriage before they come to the turnpike gate, in order to avoid payment of the toll; ſuch perſon, be-

ing the *owner*, on conviction before three truſtees or one juſtice, on the oath of one witneſs, ſhall forfeit 5*l.*; if not forthwith paid, to be levied by diſtreſs, rendring the overplus on demand, after deducting the reaſonable charges of making the diſtreſs and ſale, to be ſettled by ſuch truſtees or juſtice: and every *driver* offending, ſhall on like conviction be committed to the houſe of correction for one month. *ſ.* 7.

Waggon turned out of the road to avoid the tolls.

9. And no waggon, or other carriage, travelling for hire, upon any turnpike road, ſhall be turned out of the ſame, into any of the roads adjacent not being turnpike, in order to avoid, and thereby avoiding paying the tolls; on pain of forfeiting any one of the horſes drawing (not being the thill or ſhaft horſe) with all his geers and accoutrements, to the ſole benefit of any perſon who ſhall ſeize the ſame; and the perſon making ſuch diſtreſs, ſhall proceed in like manner, and be intitled to the like remedies, as is before directed in caſes of ſeizures of horſes, by the ſtatute of the 5 *G.* *c.* 12. 24 *G.* 2. *c.* 43. *ſ.* 4.

What inſcription ſhall be on the waggon.

10. If any owner of any waggon, wain, or cart, travelling for hire, ſhall drive or cauſe the ſame to be driven, on any turnpike road, not having his chriſtian and ſurname and place of abode, in large letters on the tilt or other conſpicuous part of ſuch waggon; he ſhall forfeit as for having the fellies under nine inches broad: and if he ſhall have any fictitious name thereon, he ſhall forfeit 50*l.* to be recovered in the courts at *Weſtminſter*, or before two juſtices as is aforeſaid. 26 *G.* 2. *c.* 30. *ſ.* 15.

And moreover, every owner of a common ſtage waggon or cart, having the fellies under nine inches or ſix inches, ſhall over and above cauſe to be painted on the tilt of ſuch as hath a tilt, otherwiſe on the moſt conſpicuous part, the following words in large and legible characters [COMMON STAGE WAGGON or CART] on pain of forfeiting one of the horſes or beaſts (not being the ſhaft or thill horſe) with the accoutrements, to him who ſhall ſeize the ſame; the ſeizor to have like remedy as before is ſpecified in the caſe of drawing with wheels under nine inches broad, by the 26 *G.* 2. *c.* 30. *ſ.* 2, 13. 28 *G.* 2. *c.* 17. *ſ.* 14.

Proſecution how to be ordered for offences againſt turnpike laws.

11. The turnpike truſtees, or five of them, ſhall appoint perſons to carry on proſecutions, for offences againſt any acts relating to turnpike roads; and charge the ſurveyors to be diligent in inquiring after ſuch offences: and all turnpike officers ſhall (on pain of removal and diſability) as often as any offence ſhall come to their knowledge, give immediate notice to a truſtee, who ſhall forthwith procure a meeting of the truſtees or five of them, who ſhall give immediate directions for the proſecution. 26 *G.* 2. *c.* 30. *ſ.* 18, 19.

Provided, that they ſhall not be obliged to proſecute, unleſs on confeſſion of the offender, or unleſs one witneſs can be produced to prove the offence. *ſ.* 22.

And the truſtees, or five of them, ſhall out of the tolls pay to the proſecutor, ſo much as the coſts allowed by law ſhall fall ſhort of reimburſing him his reaſonable expences. *ſ.* 21.

And every turnpike ſurveyor and toll gatherer, and all ſuch perſons employed by the truſtees as receive ſalaries, who ſhall wilfully neglect to ſeize any ſupernumerary horſe drawing contrary to the acts of the 26 *G.* 2. *c.* 30. and 28 *G.* 2. *c.* 17. and to lay ſuch information upon oath before a juſtice, or before the truſtees at their meetings, as by the ſaid act of the 26 *G.* 2. is directed,—ſhall upon information on oath before one juſtice, forfeit 10 *l.* half to the informer, and half to repairing the roads as the truſtees ſhall think fit. 28 *G.* 2. *c.* 17. *ſ.* 17.

And to prevent fraudulent ſeizures to evade the penalties, it ſhall be lawful for all courts, and every juſtice of the peace before whom any proceeding ſhall be, for any penalty or forfeiture inflicted by any act for repairing turnpike roads, or any way concerning the ſame, and they are required, where any prior ſeizure, action, information, or conviction ſhall be ſet up by way of defence,—to examine into the real merits thereof; and if it ſhall appear that the ſame was not done to recover ſuch penalty or forfeiture for the real purpoſes for which they were enacted, but to favour the offender, ſuch prior proceeding ſhall be deemed fraudulent and void; and ſuch court or juſtice ſhall proceed as if no ſuch prior proceeding had been. 28 *G.* 2. *c.* 17. *ſ.* 12.

Conſtable to execute the warrants of the truſtees.

12. The conſtable ſhall execute all warrants on the act of the 8 *G.* 2. *c.* 20. abovementioned, and on any former act concerning turnpikes; on pain of 5 *l.* to be levied by diſtreſs, by warrant of two juſtices directed to the high conſtable, in like manner as the penalties for aſſaulting the collector of the toll. 8 *G.* 2. *c.* 20. *ſ.* 13.

HAVING thus gone through the great number of laws relating to the highways, I ſhall add one obſervation upon the whole, which is this;——Notwithſtanding that the wiſdom of the nation hath been employed for above 200 years in redreſſing the great evil of bad roads, yet excepting in ſome caſes where turnpikes have been erected, the roads are as bad now, as they were in the days of *Philip* and *Mary*. And the defect is in many places, not ſo much the want of hands, as of proper direction. The ſame multitudes which will aſſemble to demoliſh a turnpike, at the hazard of their liberty and lives, are able, and (I doubt not) would be willing, if rightly inſtructed, to make the roads good, without paying turnpike tolls. But the misfortune is this; altho' the laws have provided that the ſurveyors ſhall be choſen out of the more ſubſtantial inhabitants, yet when that is done, ſcarce one of them in 500 knows how to make a good road, and if he does, his power continues in effect but for ſix days; and his ſucceſſor probably hath other ſchemes and notions, and the road is made never the better. Hence it is, that when the people aſſemble to repair the highways (if indeed they do aſſemble), they ſpend the time in diverſions, and making bargains, and other idle amuſements. And why ſhould they not? They may as well meet and do nothing, as work hard, and to no purpoſe. And from ſo many years experience, the caſe will never be otherwiſe, unleſs the

the juſtices of the peace, or others (in like manner as the turnpike truſtees), ſhall have power given to them by act of parliament, to appoint general ſurveyors, within proper diſtricts, with ſalaries, to lay out the roads, and attend and direct the work, and ſee the ſtatute labour well performed. And this may be effected without any new aſſeſſment or charge; half the preſent aſſeſſment of 6*d.* in the pound, or even leſs than half, would be ſufficient in many places both to find ſalaries, and to widen and purchaſe roads where needful. And the people, when they ſhould find the benefit of their labour, would work with chearfulneſs.

There is another defect, eſpecially in the northern counties, in proportioning the number of men and carriages. The law requires no perſons to find carts or carriages (as hath been ſaid) but thoſe who have 50*l.* a year, or who keep a draught or plough: All others (having above 40*s.* a year) are to find two men, but no cart or carriage. Now in many places, the people who occupy 50*l.* a year, or who keep a draught or plough are very few in compariſon of thoſe who keep a ſingle horſe and cart, and have not perhaps two able men in the family: In which caſe, it would be more eligible and uſeful, for ſuch families to find one man with the horſe and cart, than two men without the ſame.

A. Warrant for the returning new ſurveyors; on 3 *W.* *c.* 12. *ſ.* 3, 9.

Weſtmorland. { To *Edward Cooke*, gentleman, high conſtable of *Lonſdale* ward within the ſaid county.

BY *virtue of the ſtatute in that behalf made, You are hereby required forthwith to iſſue your warrants to all the petty conſtables within your ſaid ward, in the form or to the effect following; that is to ſay:*

Weſtmorland Lonſdale Ward. { To the conſtable of ———.

BY *virtue of a precept from his majeſty's juſtices of the peace, acting in and for the ſaid Ward, within the ſaid county, at their ſpecial ſeſſions for the highways within the ſaid Ward aſſembled, you are hereby required to give due notice to the churchwardens, ſurveyors of the highways, and other inhabitants, within your pariſh, that they do aſſemble together with you the ſaid conſtable, on the* 26*th day of* December *next, and make a liſt of the names of a competent number of the inhabitants within your ſaid pariſh, who have an eſtate in lands, tenements, or hereditaments, in their own right or of their wives, of the yearly value of* 10*l.* *or a perſonal eſtate of the value of* 100*l.* *or are occupiers or tenants of houſes, lands, tenements, or hereditaments of the yearly value of* 30*l.* *if any ſuch there be, or if there be no ſuch perſons in your ſaid pariſh, then the ſaid liſt to be of the moſt ſufficient inhabitants within your*

your ſaid pariſh: With which ſaid liſt you are perſonally to appear before the ſaid juſtices at their ſpecial ſeſſions to be holden at ——— *within the ſaid Ward in the county aforeſaid, on the* ——— *day of* ——— *now next enſuing, at the hour of* ——— *in the forenoon of the ſame day; that out of the ſaid liſt the ſaid juſtices then and there may nominate and appoint ſuch perſons to be ſurveyors of the highways within your ſaid pariſh for the year then next enſuing, as they the ſaid juſtices ſhall think fit and approve of.* [*And you are likewiſe to give notice to the preſent ſurveyors, that they do appear at the ſame time and place, and give an account upon oath before the ſaid juſtices, of all money that hath come to their hands, which ought to be employed in amending of the highways, and how they have diſpoſed of the ſame.*] *Given under my hand at* Hall Beck *in the ſaid county, the* ——— *day of* ———.

Edward Cooke,
High Conſtable.

And this you the ſaid high conſtable are in no wiſe to omit, on the peril that ſhall enſue thereof: Given under our hands and ſeals at our ſpecial ſeſſions at ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

B. Appointment of the ſurveyor.

Weſtmorland
Lonſdale Ward. } At a ſpecial ſeſſions of the peace for the ſaid Ward, held at ——— in the ſaid Ward, within the county aforeſaid, the ——— day of ——— in the ——— year of the reign of ——— by and before ——— eſquires, juſtices aſſigned to keep the peace of our ſaid lord the king in the ſaid county:

WE *the ſaid juſtices do hereby nominate and appoint* A. S. *of* ——— *in the pariſh of* ——— *in the county aforeſaid, yeoman, to be ſurveyor of the highways within the ſaid pariſh* [or, *within the townſhip of* ——— *within the ſaid pariſh*] *for one whole year next enſuing the date hereof, and until he ſhall have given an account of his receipts and diſburſements and other matters relating to his ſaid office, according to law. Given under our hands and ſeals the day and year firſt abovewritten.*

C. Indictment for not repairing a common highway.

THE *jurors for our lord the king upon their oath preſent, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and ancient king's highway, leading from the town of* ——— *in the county of* ——— *towards and unto the market town of* ——— *in the county of* ———, *uſed for*

for all the liege ſubjects of our ſaid lord the king, and of his predeceſſors, with their horſes, coaches, carts, and carriages, to go, return, paſs, ride, and labour at their will and pleaſure; and that a certain part of the ſame king's common highway, called ——— ſituate, lying, and being in the pariſh of ——— in the county of ——— aforeſaid, containing in length ——— feet, and in breadth ——— feet, on the ——— day of ——— in the ——— year of the reign of ——— and continually afterwards, until the day of the taking of this inquiſition, was and yet is in great decay, for the want of due reparation and amendment of the ſame, ſo that the ſubjects of our ſaid lord the king, paſſing and travelling thro' the ſame, with their horſes, coaches, carts, and carriages, could not during the time aforeſaid, nor yet can, go, return, paſs, ride, and labour, without great danger; to the great damage and comman nuſance of all the liege ſubjects of our ſaid lord the king, paſſing thro' that way, and againſt the peace of our ſaid lord the king, his crown, and dignity: And that A. O. *of ——— aforeſaid, gentleman, ought by reaſon of the tenure of his lands and tenements, ſituate, lying, and being at ——— aforeſaid, in the county aforeſaid, to repair and amend the ſaid highway, when and ſo often as it ſhall be neceſſary.*

Or, *that the inhabitants of the ſaid pariſh of ——— in the ſaid county of ——— the common highway aforeſaid (ſo as aforeſaid being in decay) ought to repair and amend, when and ſo often as it ſhall be neceſſary.*

Indictment for not repairing an ancient horſe and foot way.

THE *jurors for our lord the king upon their oath preſent, that from the time, of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from ——— in the county of ——— to ——— in the county of ——— for all the liege ſubjects of our now lord the king, and his anceſtors, on horſeback and on foot, to go, return, paſs, ride, labour, and drive their cattle at their will, and that a certain part of the ſame common highway, ſituate, lying, and being within the pariſh of ——— in the county of ——— aforeſaid, containing in length ——— feet, and in breadth ——— feet, on the ——— day of ——— in the ——— year of the reign of ——— and continually afterwards, until the day of the taking of this inquiſition, at the pariſh of ——— aforeſaid, in the county aforeſaid, was, and yet is, very ruinous, miry, deep, broken, and in ſuch decay, for want of due reparation and amendment of the ſame, that the liege ſubjects of our ſaid lord the king, by and thro' the ſame way, with their horſes and cattle, could not during the time aforeſaid, nor yet can go, return, paſs, ride, and labour, as they ought and were wont to do, without great danger of themſelves and of their goods, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway*

going, returning, paſſing, riding, and labouring, and againſt the peace of our ſaid lord the king. And that the inhabitants of the ſame pariſh of ——— in the county aforeſaid, the ſame common highway, ſo as aforeſaid being in decay, ought to repair and amend, when, and ſo often as it ſhall be neceſſary.

Indictment for incroaching upon a highway, by building thereupon.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that one* A. O. *late of ——— carpenter, the ——— day of ——— in the ——— year ——— with force and arms, at ——— in and upon a common highway, in a certain place commonly called ——— there leading from ——— to ——— by a certain building there, containing in length ——— feet, and in breadth ——— feet, by him the ſaid* A. O. *erected and built, hath unlawfully and unjuſtly incroached, and doth yet incroach, and the building aforeſaid ſo as is aforeſaid erected and built by him the ſaid* A. O. *from the aforeſaid ——— day of ——— in the year aforeſaid, unto the day of exhibiting this information, at ——— aforeſaid in the county aforeſaid, with force and arms, unlawfully and unjuſtly hath continued and doth yet continue, by reaſon whereof the common highway aforeſaid hath become and is greatly ſtraitned, ſo that the lieges and ſubjects of the ſaid lord the king upon and thro' the ſame common highway aforeſaid, with their horſes, carts, and carriages cannot go, paſs, ride, and labour as they ought and were wont to do, to the great and common nuſance of all the lieges and ſubjects of the ſaid lord the king in and through the ſaid common highway going, paſſing, riding, and labouring, and againſt the peace of the ſaid lord the king.* Trem. 196.

Indictment for incloſing the highway.

Weſtmorland. THE *jurors of our lord the king upon their oath preſent, That whereas from the time whereof the memory of man is not to the contrary, it was uſed, that the liege ſubjects of our ſaid lord the king had and lawfully uſed a certain common highway at ——— in the ſaid county, in a certain place there called ——— leading from the town of ——— aforeſaid, to the town of ——— for themſelves and their goods, without any ſtoppage or hindrance by any ditches, hedges, or other obſtacles whatſoever; nevertheleſs one* A. O. *of ——— aforeſaid, in the county of ——— aforeſaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at ——— aforeſaid, in the county of ——— aforeſaid, in the place aforeſaid called ——— upon the common highway aforeſaid, a certain ditch and quickſet hedge did caſt up, ſet, and erect, and the ſaid ditch and quickſet hedge ſo as is aforeſaid caſt up, ſet,*

and

and erected, doth yet continue and keep; to the great ſtoppage and hindrance of the liege ſubjects of our ſaid lord the king, paſſing in and thro' the ſaid common highway, and againſt the peace of our ſaid lord the king.

Indictment for laying timber or other obſtructions in the highway.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and on divers other days and times, as well before as afterwards, with force and arms, at* ——— *in the ſaid county, in and upon the king's common highway there, leading from* ——— *unto the town of* ——— *divers great pieces of timber put and placed and cauſed to be put and placed, and the ſame great pieces of timber ſo as aforeſaid put and placed, from the aforeſaid* ——— *day of* ——— *in the* ——— *year aforeſaid, until the day of exhibiting this information, in and upon the king's common highway aforeſaid, to be, lie, and remain, hath permitted, and doth ſtill permit, to the grievous and common nuſance of all the lieges and ſubjects of the ſaid lord the king, upon and thro' the king's common highway aforeſaid going, paſſing, riding, and travelling, and againſt the peace of our ſaid lord the king, his crown and dignity.* Trem. 197.

Or, ——*great quantity of dung, and other filth, by reaſon whereof, divers hurtful and unwholſome ſmells from the ſaid dung and other filth did then and there ariſe, and thereby the air there became, was, and is corrupted and infected* ———

Or, ——— *cart loads of rubbiſh* ——— *by reaſon whereof the ſaid highway for the whole time aforeſaid was ſtraitned and obſtructed, ſo that the liege ſubjects of our ſaid lord the king could not ſo freely paſs and repaſs about their lawful buſineſs, thro' the ſaid common highway there, as they ought and have been accuſtomed* ———

Indictment for ſtopping up a watercourſe, whereby the highway is overflowed.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at the pariſh aforeſaid, in the county aforeſaid, a certain ancient watercourſe, adjoining to the king's common highway, within the ſame pariſh, leading from the town of* ——— *in the county aforeſaid, towards and unto* ———

with

with gravel and other materials, unlawfully and injuriously did obſtruct and ſtop up; and the ſaid watercourſe, ſo as aforeſaid obſtructed and ſtopped up, from the ſaid ——— day of ——— in the year aforeſaid, until the day of the taking of this inquiſition, at the pariſh aforeſaid, in the county aforeſaid, unlawfully and injuriouſly hath continued, and ſtill doth continue, by reaſon whereof the rain and waters that were wont, and ought to flow and paſs through the ſaid watercourſe, on the ſame day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquiſition, did overflow and remain, in the king's common highway aforeſaid, and thereby the ſame was, and yet is greatly hurt and ſpoiled, ſo that the liege ſubjects of our ſaid lord the king, through the ſame way, with their horſes, coaches, carts, and carriages, then, and on the ſaid other days and times, could not, nor yet can go, return, paſs, ride, and labour, as they ought and were wont to do; to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding, and labouring, and againſt the peace of our ſaid lord the king.

D. Preſentment by a juſtice on his view.

Weſtmorland. AT *the general quarter ſeſſions of the peace of our lord the king, held for the county of ——— aforeſaid, at ——— in the ſaid county, on* Monday *the ——— day of ——— in the ——— year of the reign of ——— before ——— eſquires, and others their companions, juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed,* Thomas Carleton, *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by virtue of the ſtatute in ſuch caſe made and provided, upon his own proper knowledge doth preſent, That from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient king's highway, leading from the town of ——— in the county of ——— towards and unto ——— uſed for all the liege ſubjects of our ſaid lord the king and his predeceſſors, with their horſes, coaches, carts, and carriages, to go, return, paſs, ride, and labour at their will; and that a certain part of the ſame king's common highway, commonly called ——— ſituate, lying, and being in the pariſh of ——— in the ſame county, containing in length ——— yards, and in breadth ——— feet, on the ——— day of ——— in the ——— year of the reign of ——— and continually afterward, until this preſent day, at the ſaid pariſh of ——— in the county aforeſaid, was and yet is very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the ſame, ſo that the liege ſubjects of our ſaid lord the king, through the ſame way, with their horſes, coaches, carts, and carriages, could not during the time aforeſaid, nor yet can go, return,*

paſs, ride, and labour as they ought and were wont to do, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding, and labouring, and againſt the peace of our ſaid lord king; and that the inhabitants of the pariſh of ——— aforeſaid, in the county aforeſaid, the common highway aforeſaid (ſo as aforeſaid being in decay) ought to repair and amend, when and ſo often as it ſhall be neceſſary. In teſtimony whereof, the ſaid Thomas Carleton, *to theſe preſents hath ſet his hand and ſeal, this ——— day of ——— in the year aforeſaid.*

Highwaymen. See Robbery.

MVSEVM BRITAN NICVM

Here endeth the First Volume.